IN THE

# United States Court of Appeals

## For the Ninth Circuit

No. 17,608

SOUTHERN CALIFORNIA EDISON COMPANY,
*Petitioner,*

vs.

FEDERAL POWER COMMISSION,
*Respondent.*

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA,
*Petitioner,*

vs.

FEDERAL POWER COMMISSION,
*Respondent.*

On Petition to Review and Set Aside Orders of the
Federal Power Commission

## JOINT APPENDIX
## Volume II

633

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Friday, May 6, 1960.

The above-entitled matter came on for further hearing, pursuant to recess, at 10:00 o'clock a.m.

Before:

Harry W. Frazee, Presiding Examiner.

Appearances:

(As heretofore noted.)

634

## PROCEEDINGS

Presiding Examiner: The hearing will come to order, please.

Are there any preliminary matters?

Mr. Bury?

Mr. Bury: Yes. I have a matter I think might best be disposed of first thing this morning.

Yesterday at my request you reserved ruling on the offer by the Staff of Items I, J, K and L by reference.

I indicated at that time we might desire to put on short rebuttal testimony. We find after some further search that that will not be necessary. We are prepared at this time to make a statement—it will be rather brief—in opposition to the receipt in evidence of those items and we would like to be heard on that matter, if we might, so that you can rule on it at this time.

Presiding Examiner: You may proceed, Mr. Bury.

Mr. Bury: Does the Examiner have a copy of those items before him?

Presiding Examiner: No, I do not.

Mr. Bury: For the purpose of this argument, it will only be necessary for a copy of Schedule 18 of Form 12

(634)

before you. I think Counsel for Staff agreed that the printed Form of Schedule 18(b) is the same for each year.

I am showing to the Examiner page 30 of the Form 12

635

Power System Statement filed by Southern California Edison Company for the year 1957, which is the first page of Schedule 8(b) and which contains the instructions for the preparation of that form.

Mr. Everett: Excuse me, Mr. Bury. I thought you were referring to 58. Will you wait just a moment until we get [illegible]opy of 57?

Mr. Bury: I am referring only to the text printed on the form supplied by the Commission.

Mr. Everett: Mr. Bury, you are referring to FPC Form No. 12, 1957 Power, which is the statement of the Edison Company?

Mr. Bury: That is right.

Mr. Everett: Schedule 18?

Mr. Bury: The first page of Schedule 18(b) which is numbered page 30, drawing particular attention to the printed instructions for the completion of the form at the top of that page and more particularly to instruction 3 which reads, and I quote "Show for the month designated load on each line at the time of the monthly system peak as shown in column 10, Schedule 14. The load data in this schedule should be the integrated demand for a sixty-minute interval." That is as much of that instruction as I believe is pertinent, particularly the sentence: "The load data on this schedule should be for the integrated demand for a 60-minute interval."

636

I would then like to direct the Examiner's attention and ask that he take official notice of the glossary of important power and rate terms, abbreviations and units of measurement prepared by the Federal Power Commission which defines that term and which defines integrated demand as "the demand averaged over a specified period usually determined by an integrating demand meter or by the integration of a load curve."

Also, in that glossary of terms as Item 86 is the definition of instantaneous demand, we find as "the demand at any instant usually determined from readings of indicating or graphic instruments."

I would draw the Examiner's attention to the fact that at the time the information Item I, J, K and L were presented to Dr. Sorensen as data to be used in certain hypothetical questions in connection with the data for integrated demand for a 60-minute interval which appear in Form 12, they also supplied him with data from Exhibit 3 in the column headed "Hayfield to Highgrove, megawatts," which the testimony in this case very clearly shows to be the instantaneous demand reading at Highgrove substation which is then adjusted by multiplying that figure of a factor of 1.1, and I think that it is entirely improper to base a hypothetical question or questions to that witness and ask him to compare instantaneous demand figures which have been adjusted on the

basis explained with average figures.

For that reason, we believe that the hypothetical questions were entirely improper and that the data contained in Items I, J, K and L are entirely incompetent and therefore should not be received in evidence.

Mr. Everett: Mr. Examiner——

Mrs. Pajalich: The California Commission joins with Mr. Bury.

Mr. Bury: Excuse me. I am sorry. I only had one further comment to make and that is to point out that in addition, the figures in Schedule 18B besides being for integrated demands which are average figures, they are also estimated figures.

Mr. Goldberg: I am waiting for Staff Counsel to speak first.

Mrs. Pajalich: I haven't finished.

Mr. Goldberg: I am sorry.

Mrs. Pajalich: Th[illegible]ounsel for the California Commission objects to the receipt in evidence of the Items enumerated by Mr. Bury and joins with the Edison Company in its objection to their receipt.

Mr. Everett: Mr. Examiner, just to get the facts correct, I understood Mr. Bury to say a moment ago that in regard to the value from Hayfield to Highgrove that the Staff asked Dr. Sorensen to obtain that value from the

638

Staff's Exhibit 3, is that what you said, sir?

Mr. Bury: Yes, sir.

Mr. Everett: Well, turning to page 489 of the transcript, line 19, it would appear there that Dr. Sorensen was not being asked to give the value from Exhibit 3 but rather from Item I.

This is not intended to be an answer as to the merits of Mr. Bury's objection to the admission of these items, Mr. Examiner, it simply, as I stated a moment ago, is to have the record clearly show where Dr. Sorensen did obtain these values and we think that page 489 shews that this Hayfield to Highgrove value came not from Exhibit 3 but from Item I.

I didn't anticipate at this time Mr. Bury would bring up this matter. I would appreciate a moment to check to see on these other hypothetical questions exactly where Dr. Sorensen obtained the values which he read.

Mr. Bury: Excuse me, Mr. Goldberg, I wonder if I might make one more comment which I find I neglected to make and to which you may wish to respond because I think it is pertinent in this regard, and that is that even if the question had been based solely upon the values in Schedule 18, they are by the instructions in the Form and by definition average figures for loadings on each of those lines over 60-minute periods. In other words, those figures represent the average

load on those lines for a given hour, and it could only be by accident that those figures could represent values which were coincidental in time, and Dr. Sorensen testified that when he answered the questions he assumed necessarily that the values given to him represented conditions coincident in time.

Mr. Goldberg: Mr. Examiner, while staff counsel may be examining the record further for his purposes, it seems to me that I have heard no objection, assuming all of the basic facts that counsel referred to were accurate, for rejecting the items by reference.

The schedules which have been moved in evidence by Staff Counsel show clearly on their face what they are, what they purport to be, and the instructions under which they were to be prepared and we may assume, unless there is evidence to the contrary, that they were prepared in accordance with those instructions.

Now then, having all that information in the record, what Mr. Bury has done is to embark upon an argument that more properly belongs in his brief on the evidence. In other words, he is arguing that you are not to give weight to the answers made by Dr. Sorensen under the hypothesis put to him by Staff Counsel because in the opinion of Edison counsel there are deficiencies in the figures.

Now Mr. Examiner, that we will be delighted to argue with

640

Mr. Bury in our briefs, but the weight to be given the evidence is no sound basis for refusing to admit the evidence.

I am not going to take the time now to argue what properly belongs in the briefs, and I think we will be able to show you at that time that taking all of the assumptions inherent in the schedules that they do not affect the validity of the answers made by Dr. Sorensen.

Presiding Examiner: Mr. Everett, rather than wait for you now to examine the record to reply to the motion by Mr. Bury, will you proceed with the cross examination and then I will permit you to reply to the motion at a later hour.

Mr. Montgomery, will you take the stand?

Mr. Goldberg: Is Dr. Sorensen still in twon?

Mr. Bury: No, he is not.

Mr. Goldberg: This may require recalling him.

Mr. Bury: Mr. Frazee, I wanted to determine one other matter: Am I correct in assuming that Mr. Sample is excused, unless we wish to recall him?

Presiding Examiner: Mr. Sample is excused.

Mr. Bury: Thank you.

(Witness excused.)

Whereupon,

William E. Montgomery

resumed the stand and testified further as follows:

Mr. Goldberg: Mr. Examiner, if Counsel for Mr. Montgomery

641

has any additional direct testimony, I think this is the time to put it in.

Mr. Bury: We have no further direct testimony.

Mr. Goldberg: I just wanted to be sure.

Mr. Bury: I might point out at this time, because it has been mentioned with respect to witness Ashley, that I think we may recall that at the time Mr. Goldberg asked a few preliminary clarification questions of Mr. Ashley, he asked that he familiarize himself with facilities of Edison rendering service in the Colton area and in connection with that, Mr. Ashley went out and took a series of photographs which we would propose to offer in evidence with no more questions and answers but the simple identification of the photographs. As it will be a day or so before Mr. Ashley is on the stand, it might be appropriate, say at the morning recess to distribute those photographs which we now have available and perhaps by the time Mr. Ashley takes the stand we will simply identify those.

Mr. Goldberg: I think that is a good idea.

Mr. Bury: I will do that at the morning recess then.

Presiding Examiner: Thank you.

Mr. Everett.

Mr. Everett: Thank you.

Cross-Examination

By Mr. Everett:

Q. Mr. Montgomery, when Mr. Bury asked you to outline your background, training and experience, I believe you didn't mention your education. Would you tell us about that now, please? A. My formal education, you mean, Mr. Everett?

Q. Yes, sir. A. Well, I didn't go to college and if it will give you and Mr. Goldberg any comfort, I didn't even graduate from high school.

Mr. Goldberg: I don't think that was necessary, Mr. Examiner. I never suggested to Mr. Montgomery or on this record or at any time that I considered a college education or even a high school education necessary to qualify a person to testify.

Presiding Examiner: You may proceed, Mr. Everett.

Mr. Goldberg: I don't appreciate that at all.

Presiding Examiner: You will have an opportunity to question him next, Mr. Goldberg.

By Mr. Everett:

Q. Are you a licensed engineer, Mr. Montgomery? A. I am.

Q. In the State of California? A. Correct.

643

Q. Mr. Montgomery, you have indicated in your testimony that you are intimately familiar with all the properties, of Edison and the manner in which they are operated, have you not? A. I have indicated that I am familiar and am accountable for the operation of those properties.

Q. And also the manner in which they are operated? A. That is correct.

Q. Would you tell us what you mean by operating properties? A. Substations, generating plants, transmission lines, distribution systems, all of the facilities that produce, transmit, transform, distribute electric energy and electric service to customers.

Q. And what did you mean by the manner in which they are operated? A. Well, I suppose that it refers, Mr. Everett, to the practices and procedures and policies pertaining to the operation of those properties.

Q. Does Edison have an operating manual or operating instructions for the general operation of its substations? A. We have quite a few different operating instruction manuals, Mr. Everett.

Q. And they apply to the operation of the substations, some of them do?

644

A. Some of them do, yes, sir. That is correct.

Q. Are you familiar with these instructions? A. In a general way, not in detail. I couldn't recite them for you in detail.

Q. Mr. Montgomery, you have testified as to the number, capacity and location of the generating plants on the Edison system and the connecting transmission lines, have you not? A. I have, indeed.

Mr. Everett: Mr. Examiner, in connection with our questioning of Mr. Montgomery, we wish to have identified as an item by reference for incorporation into this record the following schedules from FPC Form No. 12, Power System Statement, for the year 1958 and filed with the FPC by Southern California Edison Company: Schedules 1, 17 and 18B.

Mr. Bury: Give us the caption of those schedules, please.

That is Schedule 1, Capacity and Output of System Generating Plants, commencing on page 4 of Form 12.

Mr. Everett: Mr. Examiner, we realize that one of these schedules we have mentioned, namely Schedule 18B, has already been identified as an item by reference. You marked it Item I. But as you will also recall, there has been some objection filed to the admission of that Item I in evidence and we therefore want to have Schedule 18B identified again, this time in connection with Schedules 1 and 17, and in connection

645

of course with the testimony of another witness.

Mr. Bury: Excuse me, Mr. Everett. I believe that the Items we identified the other day were merely single pages from Schedule 18B. Is it your intention now to include the entire schedule?

(645)

Mr. Everett: Yes, that is correct.

Mr. Bury: Fine.

Mr. Everett: In other words, Your Honor, if you rule with Mr. Bury in regard to Item I, page 31 of Schedule 18B, will not be in evidence, and so for that purpose we are including Schedule 18B along with Schedules 1 and 17 in this new request.

Mr. Goldberg: But, Mr. Everett, isn't it the fact that even if the Examiner rules with us on page 31 of Schedule 18B, you would want the balance of the schedules in nevertheless?

Mr. Everett: Yes.

Mr. Goldberg: You would have to move the balance in at this time, isn't that so?

Mr. Everett: Yes.

The only reason I bring this up is I didn't want someone to think we were cluttering up the record by bringing up Schedule 18B again when it has already been referred to in Item I.

Mr. Bury: I think that is an appropriate way to do it, the

646

way that has been suggested at this time.

Presiding Examiner: The item referred to will be marked Item N for identification.

(The document referred to was identified as Item N by reference.)

Mr. Bury: That is all of Schedule 1, Schedule 17 and Schedule 18B of the form filed by Edison for the year 1958.

By Mr. Everett:

Q. Mr. Montgomery, will you state what the installed capacity of Hoover and Etiwanda sources of power and the small hydro developments located in what is considered Edison's Eastern Division are as shown by Edison's Form 12 for 1958, Schedule I, or Item N? A. You mean you want me to read these figures from Sheet 4 of Schedule 1?

Q. Could you give us the aggregate figure, please, sir? A. You mean add them up?

Q. Yes, sir. The total installed capacity of the Hoover and Etiwanda sources and the small hydro developments in your Eastern Division. A. It will take a little time.

Mr. Bury: Could I ask that Mr. Everett's question be read back?

Presiding Examiner: Yes, Miss Reporter, will you read

it, please?

(The question, as recorded, was read by the reporter.)

The Witness: Mr. Everett, subject to a possible error in the hasty addition here, the answer to your question, which I understand to be the summation of Etiwanda and Hoover and those small hydro plants in the Eastern Division of the company as shown on page 4 of Schedule 1 for the year end of December 31, 1958, is 668,420.

Mr. Bury: Megawatts, Mr. Montgomery?

The Witness: Kilowatts.

By Mr. Everett:

Q. Mr. Montgomery, was the production of these plants in Edison's Eastern Division during 1958 as shown in Schedule 1 of Edison's 1958 Power System Statement or Item N two billion 957 million 939 thousands 456 kilowatt hours? A. What was the question, please?

Q. My question was, was the production of these plants in Edison's Eastern Division during 1958 as shown

(647)

in Schedule 1, Edison's 1958 Power System Statement, or Item N, 2 billion, 957 million 939 thousand 456 kilowatt hours? A. I don't know.

Q. Well, would you determine if that figure is correct, please? A. I don't have any way to determine it here, Mr. Everett.

648

Q. Did you hear me say, Mr. Montgomery, that this figure was as shown in Schedule 1 of your company's 1958 Power System Statement? A. Yes, but I didn't understand that that was your question. You asked me if that was factual and I said I didn't know and I don't have any way to check it.

Q. I thought Mr. Bury placed in front of you this 1958 Power System Statement of the Edison Company. A. Is your question then is that what is reported in this schedule?

**Mr. Everett:** Mr. Examiner, I think that question was amply clear. I stated it twice and each time I said it is shown in Edison's 1958 Power System Statement.

**Mr. Bury:** Mr. Everett——

**Presiding Examiner:** As I understood you asked him if that was their production and he said he didn't know, that he didn't have any way of checking it.

Now, if you will ask him if that is what is reported, you will probably get the answer you want.

**Mr. Everett:** Sir, each time I asked the question I said as shown in Schedule 1 of Edison's 1958 Power System Statement, Item N. I went into, I think, sufficient detail.

**Mr. Goldberg:** Mr. Examiner, may I respectfully submit that even if there had been no reference to that Schedule 1 by Mr. Everett, this witness obviously knew that he had before him a report from which he could check the data. This is going to take an awfully long time if we are going to have this kind of an attitude from the witness.

Mr. Bury: I resent that kind of a comment. I think it is incumbent upon Counsel to make the question specific enough.

Mr. Everett: I think that question was specific. If the reporter will read it back I think you will find it was.

Presiding Examiner: Will you read me the question, Miss Reporter?

(The question, as recorded, was read by the reporter.)

Presiding Examiner: The witness answered he didn't know.

Then, will you read me the next question, please, Miss Reporter?

(The record was read by the reporter.)

Presiding Examiner: Will you answer that question, Mr. Witness?

The Witness: Mr. Examiner, apparently he wants me to add up all these figures here, the sum total of approximately 20 million. It will take some time to do that. If you want me to, I will.

Presiding Examiner: Is that what you want him to do? Since the court doesn't have a copy of it I don't know what

you are asking.

Mr. Everett: The witness may, if he wishes, accept the figure which I stated subject of course to check by the witness later on.

Mr. Bury: I would be willing to accept the figure subject to check if you will define what you mean by "Eastern divisions," whether you meant the eastern division hydro plants or the generating resources, the capacity of which you had him total before.

I assume you meant the latter so that the figures would be comparable.

Mr. Everett: Mr. Examiner, this phrase "Eastern Division" isn't something that I created. It is a phrase I believe which the Edison Company itself uses to describe a part of its system.

Presiding Examiner: Mr. Montgomery, do you understand what the Staff means by your Eastern Division?

The Witness: Well, not exactly, Mr. Examiner. We don't have an eastern division in the sense in which he apparently is using it. We have several eastern divisions. We are organized functionally and we have an eastern division of transmissions and an eastern division of substations, and we have a southern division of hydro generation which would include those hydro facilities in the east end of the system.

We have a designation which we commonly use in the

so-called east end, but an eastern division as such, including all resources that he mentioned, we do not have. However, I assumed that I understood what he meant by that. I use the term "east end."

Presiding Examiner: Well, Mr. Everett, it would appear to me that you and the witness ought to get on some mutual ground so that he understand what the question is you are asking him. Therefore, you will get an answer that you can understand and the court can understand when it comes to writing the decision.

Mr. Everett: Your Honor, I don't know how I could go into any more descriptive detail than I have already in these questions. I think that other attorneys might not have gone into anywheres near as much detail for the reason they thought it was unnecessary.

We will, of course, Your Honor, accede to your suggestion to——

Presiding Examiner: Where did you get the term "Eastern division"?

Mr. Everett: I am just coming to that point now, sir.

By Mr. Everett:

Q. Mr. Montgomery, would you please turn to page 28(b) of your company's 1958 Power System Statement, FPC Form No. 12. A. 28-b?

Q. Yes, sir.

652

Page 28(b).

Mr. Bury: Is that Drawing No. 9117, designated down in the lower right-hand corner?

Mr. Everett: No, sir, it is not. It appears to be a map. I would say it would be proper to identify it as being on page 28(b).

The Witness: I have it, sir.

By Mr. Everett:

Q. Thank you.

Mr. Montgomery, in the lower right-hand corner of page 28(b) of Edison's 1958 Power System Statement, FPC Form No. 12, filed with the Federal Power Commission, do you see there the word "e-a-s-t-e-r-n"?

A. I do, indeed.

Q. Well, sir, the area over which that word is written is the area which I had in mind when I referred to your eastern division. A. And my answer with respect to your first question included the same area, sir. This is a commercial division.

Presiding Examiner: Now, ask him the question that you wanted to know about the eastern division. You have identified what you are talking about and the witness understands what you are talking about.

Mr. Bury: I think the witness said his answer to the question would now be the same.

653

The Witness: The answer to the first question, relative to capacity.

Presiding Examiner: I understood the witness to mean the figures that you gave the Staff in regard to generating capacity at Hoover Dam and Etiwanda and so forth?

The Witness: Yes.

By Mr. Everett:

Q. Mr. Montgomery, subject to check—subject to check by you, sir—what is the—was the production of the eastern division during 1958 as shown in Schedule 1 of your company's 1958 Power System Statement 2 billion 957 million 939 thousand 456 kilowatt hours? A. Subject to check, yes, sir.

Q. Thank you.

Now, would you refer to the same power system statement, Schedule 17.

Subject to check, sir, would you agree that the total consumption of electric energy in Edison's Ontario, San Bernardino and Redlands Districts was 1 billion 173 million 822 thousand 685 kilowatt hours? A. Subject to check.

Q. Thank you.

Mr. Montgomery, are those three districts which I just mentioned, namely, Ontario, San Bernardino and Redlands, the three most easterly districts in your eastern division,

654

as appears on the map on page 28(b)? A. I think that is correct, Mr. Everett. Let me just orient myself geographically here for a minute.

That is correct.

Q. Thank you.

Mr. Montgomery, subject to check by yourself, would you agree that the production of these plants in the eastern division of Edison's system and the Hoover generators assigned to Edison produced twice as much energy as required to meet the load in the Ontario, San Bernardino and Redlands districts during 1958? A. As I remember your quotation of the figures, I think that is approximately correct.

Could I have those figures again, though.

Q. One thing, sir: is the production which was 2 billion 957 million 939 thousand 456 and the consumption was 1 billion 173 million 822 thousand 685? A. The production then was more than twice the equivalent of the consumption in the three districts named.

Q. Thank you sir.

This area includes the City of Colton and facilities used by Edison to deliver energy to the City of Colton, does it not? A. Yes, it does.

Q. Referring again to Edison's Power System Statement

for 1958, Mr. Montgomery, Schedule 1, subject to check by yourself, would you agree that the net production of the remaining generating plants, excluding those which we have mentioned, was 12 billion 941 million 432 thousand 927 kilowatt hours? A. 12 billion what, please?

Q. 12 billion 941 million 432 thousand 927?

Mr. Bury: Excuse me. Could I interrupt just for a second?

I wonder if I might at the recess pick up some of these figures from you directly so that I will not have to wait for the transcript in order to begin checking them. Can I do that?

(655)

Mr. Everett: Certainly.

Mr. Bury: Thank you.

The Witness: Subject to check, I think that is correct. It appears to be approximately so.

By Mr. Everett:

Q. Thank you.

Subject to check, Mr. Montgomery, was the 1958 consumption by Edison's consumers other than in the three districts we have just mentioned 12 billion 180 million 620 thousand 108 kilowatt hours? A. Subject to check, I will accept that.

Q. Mr. Montgomery, I think this question is one which

656

you will be able to answer now without being required to check it later: How much electric energy was generated during 1958 in Edison's Hoover generators? A. In Edison's Hoover generators?

Q. Yes, sir. A. Calendar year 1958?

Q. Yes sir. That is correct. A. The figure I have here in my notes is 941 million 990 thousand 700, sir, generated on units A-5, A-6 and A-7. Those three units are allocated to the use of Edison at the Hoover power plant.

Q. Mr. Montgomery, turning again to Schedule 1 in Edison company's 1958 power system statement, on page 5 of Schedule 1, could you tell us what is there shown as the net generation during 1958 at Edison's Hoover generators?

Mrs. Pajalich: Did Mr. Everett say Edison's Hoover?

Mr. Everett: Yes, I did, Edison's Hoover generator.

The Witness: I don't think this is what this figure shows, Mr. Everett. By Edison's Hoover in the answer to my previous question I designated A-5, A-6 and A-7 which are normally called the Edison Hoover units. This figure includes in addition to the generation on A-5, A-6 and A-7 certain energy which was generated on N-5 and N-6 which are not Edison units at Hoover but are normally designated and known as MWD units at Hoover and the 941 million 990 thousand 700

kilowatt hours is included in this figure, together with 116 million 432 thousand 830 kilowatt hours that was generated on N-5 and N-6.

Mr. Everett: Would the reporter please read back Mr. Montgomery's answer?

(The answer, as recorded, was read by the reporter.)

By Mr. Everett:

Q. Mr. Montgomery, MWD Hoover energy to which you referred, would you tell us how that gets into the Edison system? A. This is going to get a little complicated, Mr. Everett. The simple answer to it—it gets into the Edison system over the Metropolitan Water District transmission line and through the Hayfield-Highgrove interconnection. However, the simple answer, perhaps, is oversimplified.

As I testified previously, we have contractual right, Edison Company has a contractual right, to the unused generating capacity in N-5 and N-6 units, and we do, as this indicates and have in the past at times, generate part of the allocation of the Edison's energy under the Hoover contract between the United States and the Edison Company on N-5 and N-6, metro units operated by the City of Los Angeles, as well as upon A-5, A-6 and A-7 units, Edison units, operated by the Edison Company as an operating agent of the U.S. Government.

658

Q. Thank you, sir.

Mr. Montgomery, would you please turn to Schedule 8 of Edison's 1958 power system statement? A. Page 18, sir?

Q. Page 19, Mr. Montgomery. A. Thank you.

Q. And in the fifth column of Schedule 8, page 19, the figure given there for energy received by Edison from Metropolitan Water District appears to be different from the MWD figure which you mentioned earlier, is it not? A. It is a different figure. That is for sure.

Q. Can you explain the difference, sir? A. Well, I doubt it.

Q. Was this MWD energy at Hoover to which you referred, was that hydraulic energy or electric energy? A. Well, I suppose that you could say it is both. Of course, kilowatt hours is always electrical energy, but there is hydro energy, Mr. Everett, that produces the electrical energy.

Q. Well, the hydraulic energy which I had in mind, Mr. Montgomery, is that which is mentioned on page 5(c) of this power system statement for 1958.

Do you have page 5(c) in front of you, sir? A. Yes, sir.

Q. Well, you will note down about the middle of the page

659

under the general heading "Line 26, columns 6 and 8," that there is a note and in that note there is reference made to falling water available at Hoover? A. Yes. That reference goes back to the basic contracts for sale of Hoover energy in which a reference is made in each of the contracts to falling water available for generation of energy and that the basis on which billings will be made and so forth is in terms of the kilowatt hours produced by that falling water, Mr. Everett. That is in all the basic contracts.

Q. Does this distinction between hydraulic energy and electric energy have anything to do with explaining these apparent variations in figures which we have been talking about? In other words, do those variations result from the fact that we are not talking about the same thing, that you might be referring to hydraulic energy at Hoover and I might have been referring to electric energy? A. Could I have the question read back, please?

Presiding Examiner: Will you read the question, please, Miss Reporter.

(The question, as recorded, was read by the reporter.)

The Witness: I think the best I can do Mr. Everett is give you a yes and no answer on that. You say having anything to do with it. I say it might have something to do with it. This operation is quite complex. Among other things, an exchange

of energy is made between Edison and Metropolitan Water District in which considerable delivery of energy is delivered from the Edison system into the Metropolitan Water District system and then some of that energy is returned to Edison, generated on N-5 and N-6 units, and this is the interchange part of it, and some of it is exchanged. That is, some of it does not come back through the Metropolitan Water District tie line with Edison, or from the N-5, N-6 generators but is transferred in the form of falling water at Hoover power plant and is generated on A-5, A-6 and A-7 units and comes to Edison through the Edison's owned and operated Chino transmission system.

The more we get into this, the more complicated it gets. I am sorry that is not a good explanation for it.

(660)

Q. That is helpful, thank you.

Mr. Montgomery, is it the electric energy which is generated in Edison's Hoover generators transmitted over Edison's 220 KV circuits to Edison's Chino substation? A. Your question is, is the energy generated transmitted over Edison's transmission system?

Q. Yes, sir. The energy generated on Edison's generators at Hoover, is that transmitted over Edison's 220 KV circuits to Edison's Chino substation? A. That is right.

Q. Thank you.

661

And Edison's Chino substation is connected with Edison's Highgrove substation by a 220 KV line, is it not? A. It is, and also connected to all of the other 220 KV substations, all of the 18, besides Highgrove, through 220 KV systems, grid. It is not connected only to Highgrove. It is connected to all of the 220 KV substations. There are twenty altogether, including Chino.

Q. But there is no direct line, sir, from Chino to each of those 19 substations, I believe you mentioned? A. No direct lines? Well, I suppose in one sense no direct line, if you mean by that that there is no line that goes only to each of those stations and no place else, but there is a direct transmission system that interconnects the entire network of 220 to 66 KV stepdown substations.

Q. Subject to check, Mr. Montgomery, unless you can locate this without difficulty in Edison's 1958 Form 12, did Edison receive 73 million 19 thousand and 17 kilowatt hours from MWD at Hayfield during 1958? A. That is that figure we were looking at a little while ago that didn't check, one of them.

Mr. Bury: Schedule 8?

Mr. Everett: I think it is on page 19 of Schedule 8.

The Witness: To tell you the truth, I don't know what that 73 million is. I can check the other figure, the 196 million 588 thousand 800.

662

Q. Does the heading of the column help you any, the heading for column 5 you will note is "Energy Received," whereas the heading for column 6 is "Energy Delivered."

A. I understand what it says. I don't understand the meaning of the figure because it doesn't check on the figures that I have here.

On the Highgrove end of this tie line, there are two kilowatt hour ratchet meters, one that operates to register kilowatt hours in coming to Highgrove bus from the Hayfield end of the line, and the other one that registers the kilowatt hours going the opposite direction towards Hayfield from Highgrove. Now, by the heading of these two columns here, I would suppose that they were referring to the accumulated kilowatt hours for the year 1958 as registered by those meters and one of those meters checked my figures which incidentally I checked with the dispatcher's office just last night and I am reasonably sure it is correct: 196 million 588 thousand 800 checks but I can't check the other one, sir. I am sorry.

I might explain further that there are meter readings such as this and then there are computations which you did a little discussion about here yesterday with Mr. Sample where loss factors are added, and then there is this transaction of interchange and exchange energy and unfortunately these meters on the terminal of the line will not differentiate

663

the so-called kinds of energy that goes through it. So this has to be computed and this gets quite complex and I

(663)

don't think I can describe it to you in the time we have here so that either one of us can fully understand it, sir.

Q. Thank you.

Mr. Montgomery, this energy that Edison receives from MWD at Hayfield is generated outside the State of California, is it not? A. Let me think about that one for a minute.

Did you have more to add to your question, Mr. Everett?

Q. No, I did not, sir. A. I would have to say not necessarily, I think.

Q. Well, what other sources would there be than the out of state sources? A. Well, Parker is not out of state, is it?

Q. Well, excluding Parker, would not the remainder of the energy that Edison receives at Hayfield from MWD be out of state energy? A. Yes, I suppose what didn't come from Parker would come from MWD Hoover. MWD Hoover units are in the State of Nevada. That would be out of state—out of the State of California.

Q. Yes, sir.

And that energy being delivered by MWD to Edison at Hayfield could also include some Davis energy, could it not,

664

in addition to Hoover? A. Well, now I have got a difference of opinion with you there, Mr. Everett. I don't really think so.

Q. Well, the Davis power plant is located outside the State of California. A. I will agree with you on that.

Q. Well, this difference which you stated you weren't able to reconcile, could not that represent the energy coming from Davis? A. Difference that I couldn't reconcile? Which is that, Mr. Everett?

Q. I think you mentioned that you had contacted the company's dispatcher's office and they had given you one figure and then you found in the company's Form 12 a different figure? A. No. I am real sure that that couldn't come from Davis. That doesn't reconcile the difference. I am real positive about that, sir.

Q. Well, if you don't know where it comes from, how would you know that it did not come from Davis? A. I didn't say I didn't know where it came from, sir.

Q. Oh, I am sorry. I thought that you said you couldn't explain the variation. A. I did, but I don't think we were talking about where

665

it came from at that time.

Q. Well, with reference to this difference in amount, do you know where it comes from? A. No. I don't know where any of it comes from.

Presiding Examiner: Mr. Everett, would this be a good time to take the morning recess?

Mr. Everett: All right, sir. Thank you.

(At this point, 11:15 o'clock a.m., a recess was taken until 11:25 a.m.)

666

Presiding Examiner: Are you ready, Mr. Everett?

Mr. Everett: Yes, sir.

By Mr. Everett:

Q. Mr. Montgomery, if you do not know whether all the energy which MWD delivers to Edison at Hayfield, excluding that which is generated in Parker Dam—if you do not know whether all the remainder of that energy is generated outside the State of California, then it is possible, is it not, that some of it may come from Davis Dam or other sources in Arizona? A. No, I don't think any of it comes from Davis Dam.

Q. What basis do you have for saying that, sir? A. Well, No. 1, there isn't any allocation of Davis energy to the Metropolitan Water District. There is certainly not to the Edison Company. No. 2, there isn't any entitlement for Davis energy on the part of the Metropolitan Water District, and certainly not the Edison Company. No. 3, in the Metropolitan Water District's accounting of energy, in their last annual report, and all that I have been able to check back to the inception of the delivery of their Parker entitlement, there is no accounting of any Davis energy received in the Metropolitan Water District. No. 4, I have speculated quite a bit about what the Secretary of Interior's answer to the question would be in view of the application of the preference clause in Federal projects if it was suggested that some Davis energy did in effect get into the Edison system. I don't know what the answer to that is. But I have speculated about it. No. 5, the United States owns and operates a power system, an agency of the United States responsible for that operation has full control of that power system, and for the convenience and the benefit and advantage of the United States, they see fit, and properly so, from their point of view, to do certain things in the way of interchange or substitution of energy. And it just doesn't seem reasonable to me that another agency of the United States would say that because of what this first agency of the United States does in the way of interchange and substitution of energy for their convenience, for the mutual benefit of themselves and the Metropolitan Water District, a public agency, with which they interconnect—it just doesn't seem reasonable that another agency would say that, therefore, because of what they do, the first agency, an investor owned power company is now in the interstate power business. That just doesn't seem reasonable to me.

Those are my reasons, sir.

Q. Thank you, Mr. Montgomery.

Now, you laid considerable stress on the contractual relations between MWD and USBR. But I am wondering if Davis energy would be so educated that it would follow the contracts which are in effect between MWD and USBR, rather than follow the flow in accordance with the law of physics or the law of nature. A. Are you asking me to venture an opinion on that question, sir?

Q. Well, that was what you implied, was it not—that because there was no contractual relation between MWD and USBR in regard to Davis, that energy, that, therefore, it would not be possible for Davis energy to be included in the delivery by USBR to MWD? A. I don't think I care to comment further on what I implied. I think what I said is in the record. I think it is clear. It was to me.

Q. Well, was my question a fair statement of what you said about Davis energy getting into the delivery to MWD? A. No, I said a lot more than that, I think.

Q. I know. But I am just confining it to Davis. As a matter of fact, Mr. Montgomery, MWD isn't particularly concerned about the source of energy that it receives from USBR, is it? All it is concerned with, and all that USBR is required to give MWD under the contracts which exist between MWD and USBR is, as you testified previously, an amount of energy which is equal to approximately one-half of the Parker generation. A. That is right.

Q. So when you say in the MWD annual report there is no

669

reference to the receipt by MWD from USBR of Davis energy, that is not particularly significant, is it? A. Well, it may not be to you. It was to me. That is why I mentioned it.

Q. Well, why would MWD be particularly concerned as to the source of the energy which MWD receives from USBR as long as the amount of that energy was equal to, as you testified earlier it should be, one-half of the Parker generation? A. What was your question again?

Q. I say why in this annual report of MWD to which you have referred, and which you say contains no mention of any receipt of Davis energy by MWD from USBR—what would be the occasion for MWD in that report to make any reference to Davis energy? A. Well, if they had an entitlement to Davis energy, I am pretty sure they would have a reference there some place for their board of directors to review as to what happened to it.

Q. But you testified that they are entitled to an amount of energy equal to one-half of the Parker generation. As long as MWD does receive that amount, that is all that MWD is entitled to receive from USBR, isn't it? A. That is right. And I also just testified that they didn't have any entitlement to Davis energy.

670

Q. Well, Mr. Montgomery, I think you have testified that in regard to this energy which is received at Hayfield by Edison from MWD, excluding from that amount the energy generated at Parker, that there is no—you cannot by any contracts trace the source of all that energy. Isn't that what you testified? A. I don't remember testifying to any such thing. When was this?

Q. Well, if that is not a fair statement, you have, I think, testified that you did not know the source of all the non-Parker generated energy that Edison receives from MWD at Hayfield. A. No, I think maybe where the confusion is between us now, Mr. Everett, is we were talking about this 73 million kilowatt hours here before the recess, and as I understood your question you asked me if I knew where those 73 million kilowatt hours came from, or if I could account for the difference between the 73 million and a different figure that I had—if I could reconcile the difference. And I told you that I didn't know where they come from, and I don't. There isn't any way that you can tell where what kilowatt hour comes from what generating source after it has gone through the meter and had some computations piled on top of it at Highgrove, sir.

Q. Mr. Montgomery, the maps which have been already

received in evidence as Exhibits 12 and 13, and also Edison's 1958 power system statement show, do they not, that Edison owns the 220 KV line from the connection with MWD at Hayfield, to Edison's Highgrove Substation? A. Well, I don't have in mind these maps by exhibit numbers, but it is a fact that Edison does own the 220 KV transmission line, the one and only line, from Hayfield to Highgrove. Edison owns it and operates it and maintains it.

Q. Does not the Hayfield Highgrove 220 KV line connect on the Highgrove buses near the southern end of the buses between the points of connection of transformer Banks 1-A and 2-A? A. Well, I will have to check that, Mr. Everett. Just a minute, please.

Q. I wish you would. A. Would you give me the question back again now? I have the diagram in front of me.

(The question, as recorded, was read by the reporter.)

The Witness: I think that is right. My diagram here is schematic, but the east and west buses are indicated, and I think that is right. It certainly comes into the buses between the two bank positions. And I will assume, subject to further check, that it is on the south—southerly portion

672

of the bus.

Mr. Bury: Excuse me. I think the record should show that the witness—the diagram the witness referred to is the single line diagram comparable to Item H, although it may be of a later date.

By Mr. Everett:

Q. Mr. Montgomery, except for losses, was the electric energy received at Hayfield by Edison during 1958 from MWD transmitted to Highgrove and delivered at the southern end of the Highgrove 220 KV buses, at a point between transformer Banks 1-A and 2-A? A. Well, it was certainly delivered—all that was received at Hayfield was certainly delivered to Highgrove on that line, in the buses at Highgrove. It didn't stop at any one point, though. You implied that it came to a certain point and stopped. It didn't stop there, I don't think. It kept on going.

Q. Well, this energy which Edison received from MWD at Hayfield came into the Highgrove 220 KV bus between the transformer Banks 1-A and 2-A, did it not? A. It sure would have to come into the bus—wherever this line terminal is connected—and on this diagram the physical relationship is indicated that it is on the bus between those two banks.

Q. Thank you. Mr. Montgomery, I now invite your attention

673

to Schedule 18-B, page 31, on Edison's 1958 power system statement, which shows that the Hayfield Highgrove 220 KV line had an estimated load of 77,000 kilowatts at the time of the April peak, and that this energy was moving from Hayfield to Highgrove. Could you tell us how this loading was estimated? A. No, I cannot.

Q. Would that loading have been estimated by a member of your operations Department? A. I am not sure I can even tell you that, sir. This report is not made under my supervision. I suppose the basic data from which it is made is recorded by operators in the stations who are under my general supervision. But I am not familiar with how it is transmitted from the station records to this report, sir—I am sorry.

Q. The Form 12 shows, also, does it not, an estimated loading of 61,000 kilowatts at the time of the August peak? A. We are talking about the same sheet now—Hayfield to Highgrove?

Q. Yes, sir. A. Opposite the 77, under April, from this report, I read 61 under August, whatever that means.

Q. Yes, sir, 61,000 kilowatts. A. Yes, 61 megawatts, that is right. That is what the heading says.

674

Q. Yes. And for the October peak it would be 72,000 kilowatts? A. That is what the figure shows here.

Q. Yes, sir. And the estimated loading as reported in the Form 12 for the December peak is 61,000 kilowatts? A. I am still reading the same figure.

Q. Yes. A. I don't know what it means, sir. What is the peak, by the way—monthly system peak that this refers to. Do you know?

(674)

Q. I, sir, would have to refer to the instructions which are issued for the preparation of this Schedule 18-B to answer that question. A. Well, I have some speculation in my own mind about it, because I am familiar with system peaks, and when they occur, and readings that are taken and so forth. And I just wonder if it has as much significance here as we tend to give it.

Q. On page 30 of Schedule 18-B, instruction 3 may be helpful to you. A. Yes. I read it and I understand what it says, but it is not really helpful.

Q. Did you take a look at Schedule 14, which is mentioned in that instruction? A. No, I did not.

675

Q. It is page 23. A. Yes, I am looking at it.

Q. I did not intend, sir, to ask you any questions about Schedule 14. I merely mentioned it because it was referred to in the instructions for preparation of Schedule 18-B. A. Thank you.

Q. Just for your information, that is all.

Returning to Schedule 18-B, Mr. Montgomery, in each of the system peaks which we just mentioned, the April peak and the August peak, October peak and December peak, the energy was reported as moving from Hayfield to Highgrove, was it not? A. That is what this report says, sir.

Q. This Schedule 18-B consists of 12 pages, does it not, showing the estimated loadings and directions of flows. A. Maybe I miscounted. I have got more than 12.

Q. Well, at any rate, sir, this Schedule 18-B consists of several pages, does it not? A. It does indeed.

Q. And it shows the estimated loadings, and the directions of flows on over some 380 transmission lines of voltages of 220 and 69 KV on Edison's system, does it not?

676

A. That is what it purports to show.

Q. Yes, sir. A. Most of these figures must be computed figures, because we don't have meters on these 220 KV lines as indicated here. They must be estimated and computed. I think we are putting a great deal more faith and confidence and significance in them than they deserve, sir.

Q. Well, you are not unmindful, of course, of the attestation that appears in this Form 12, made by one of your company's Vice presidents, Mr. W. L. Chadwick. A. I have that very much in mind, sir. I hesitate to say anything more for that reason. It is very difficult, I might add, Mr. Everett, to clarify what may be otherwise misunderstood. It is very difficult, at least in our power system, I would think, to comply with the requirements of this report in exact detail. And we do the very best we can, sir, to give you the information that you need, that you require and ask for here. But I think that it is a mistake to say that this is the absolute figure, that is what happened, and this is a figure that is permanent and absolute beyond all possible change. I think this would be a mistake. That is all I am trying to say.

We do the very best we can to make this an accurate report for you.

Q. Thank you for that explanation, sir.

677

Could you tell us how the direction of flows on these lines were determined? A. No, I can't tell you how they were determined. I can speculate with you a little bit more how they might be. It must be on the basis of a load study and a guess and an estimate, because in most cases there are no meters, no indicating nor recording matters of any kind on the 220 KV system. I think I have

(677)

testified along that line in my direct examination, sir, and that is factual.

Q. Thank you.

Well, forgetting for the moment about the amounts, the figures shown on Schedule 18-B, are the direction of flows as stated there correct? A. I don't know. I cannot say that. I don't know. You mean correct here—the report here as to fact, as of the date and time indicated?

Q. No, sir. Leaving aside amounts—well, specifically kilowatts and dates—and just looking for the moment at the direction of flow, is that stated correctly in Schedule 18-B? A. Well, I suppose I would have to examine each one of them here individually, and then do a lot of speculating about it. Undoubtedly some of them are obviously correct, because there is only one direction from a generating plant towards the load that the power can flow, under normal

678

conditions, short circuits excepted. However, as between some of the substations, in many cases it would flow and does flow in either direction, depending upon both load conditions and generation production at various plants. Certainly the power flow in our 220 KV grid is not unidirectional at all locations.

Q. Well, do you think, generally speaking, that these normal flows of power shown here in Schedule 18-B are correct? A. Well, I think whoever made this report out did the very best they could to make it correct, sir.

Q. Do you believe that the normal flows of power as reported here in Schedule 18-B are correct? A. I have no reason to disbelieve it at this time.

Q. Thank you. On page 31, Mr. Montgomery, of Schedule 18-B, Edison reports 69,000 kilowatts flowing from the generating station at Etiwanda to Highgrove during the December peak, is that correct? A. Well, that is correct. That is what it says here.

Q. Yes. Well, that——. A. Whether that is correct, that is what it was or not, I don't know.

Q. But I have stated correctly what Schedule 18-B shows? A. You sure have.

679

Q. Thank you.

Does this energy reach the northern end of the Highgrove 220 KV bus? A. Well, it sure reached the Highgrove bus. I am not sure which end it reached first.

Q. Well, it is the opposite end from which the circuit from Hayfield connects with the bus, is that correct? A. Well, it entered the same bus a few feet away from where the Hayfield energy came in. That is for sure.

Q. But it is at the other end of the bus, is it not? A. You mean the Etiwanda line connection?

Q. Yes, sir. A. Well, let me look. Well, according to the system single line drawing 71036 that I am looking at, the Etiwanda line is at one end of the bus opposite to that which 1-A Bank is connected.

Q. Mr. Montgomery, what intervening 220 KV lines are there between the connection made by the Etiwanda 220 KV line on the Highgrove bus, and the connection made by the Hayfield 220 KV line on the southern part of the bus? A. The Chino line intervenes between those two points of connection to the 220 bus.

Q. And is there another connection, also, sir? A. Yes, there is another connection, but you said line. You mean another line connection, or another connection—period.

680

Q. Another connection in addition to Chino, between the Etiwanda and the Hayfield connection, on the Highgrove 220 KV bus. A. You mean the A Bank connection?

Q. Yes, sir. A. I am sorry. I understood your question originally to refer to another line connection.

Q. When you say the A Bank connection, you mean transformer Bank 2-A? A. Yes.

Q. Thank you. And where is the transformer Bank 1-A connected to the Highgrove 220 KV bus? A. I think I have already said that 1-A is at the opposite end from the Etiwanda line, sir.

Q. Thank you.

Now, referring to page 31 of Schedule 18-B, what is the amount of energy being transmitted from Highgrove, by the 220 KV line to Chino at the December peak? A. Well, it says here 6 megawatts.

Q. So that would be 6,000 kilowatts? A. 6 megawatts is 6,000 kilowatts, yes, sir.

Q. Thank you. And on this same page 31 of Schedule 18-B, it is shown that the amount of energy being delivered to the Highgrove Substation from Hayfield and Etiwanda respectively at the December peak is 61,000 kilowatts

681

and 69,000 kilowatts, is it not? A. That is what the figures on this sheet say.

Q. Yes.

Mr. Everett: Mr. Examiner, the staff requests there be identified a diagram labeled "Diagram A, Docket No. E-6821."

Presiding Examiner: It will be marked Exhibit 34 for identification.

(The document referred to was marked for identification as Exhibit No. 34.)

By Mr. Everett:

Q. Mr. Montgomery, does Diagram A, Exhibit No. 34 for identification, correctly show the amounts of energy being transmitted from Highgrove to Chino, and being delivered to Highgrove from Hayfield and Etiwanda at the December peak, as reported on page 31 of Schedule 18-B? A. That is a kind of a doublebarreled question, a little bit tough to answer, and I am going to have to answer it in two parts, I think.

It shows the same figures, as I recollect them, that appear on this report, but you put a conjunction in there and implied that that is what it was, as of the December peak, and I don't know the answer to that part of it. I will agree that it shows the same figures that are on that form that we have been reviewing here together.

›682

Q. Well, my question was, sir—perhaps you did not hear it—— A. I am sorry.

Q. That is all right. Does Diagram A, Exhibit 34 for identification, correctly show the amounts of electric energy being transmitted from Highgrove to Chino, and being delivered to Highgrove from Hayfield and Etiwanda at the December peak as reported on page 31 of Schedule 18-B? A. As reported on this form.

Q. Yes, sir, that was part of my question. A. Very good.

Q. Is—— A. But I still don't know that this is what actually happened.

Q. But this Diagram A, sir, is a correct representation of the data which does appear on page 31 of Schedule 18-B? A. Yes.

(682)

Q. Thank you.

683

Mr. Montgomery, since 61,000 kilowatts was being received on the Highgrove buses from the Hayfield 220 KV line during the December peak, and 69,000 kilowatts was received—were received at Highgrove from the Etiwanda generating plant, or a total of 130,000 kilowatts, and only 6,000 kilowatts were transmitted from Highgrove 220 KV buses to Chino during the same time, where did the remainder of the energy, consisting of 124,000 kilowatts on the buses, go? A. You mean where did the difference between what was coming—what is shown on this diagram to be coming in and going out on the 220 KV lines, where did it go?

Q. Yes, sir, where did that difference go—the remainder? A. Well, it undoubtedly would go, under such circumstances, into the A Banks.

Q. Those are the—— A. There isn't anyplace else it could go, is there?

Q. Bank 1-A and Bank 2-A as shown on Diagram A? A. That is the A Banks, yes, sir.

Q. Thank you.

Since 61,000 kilowatts were being received from Hayfield on the Highgrove buses, and only 6,000 kilowatts were being transmitted from Highgrove to Chino by the 220 KV line during the December peak, and assuming, for this example only, that all this 6,000 kilowatts came from the Hayfield line, where did the remaining 55,000 kilowatts go?

Mrs. Pajalich: Mr. Examiner, Mr. Everett constantly says where did the energy go, as if it were an established fact that it went someplace at all. Is his whole question directed to this hypothetical assumption?

Mr. Goldberg: This is ridiculous, Mr. Examiner, and I must protest. If counsel has a legal objection to make,

684

she should make a legal objection. But at this stage, to say in this hearing that this energy doesn't go anyplace, and that counsel cannot use that statement in his question, I submit is ridiculous.

Mrs. Pajalich: Mr. Examiner, I didn't say the energy didn't go anyplace. I merely asked if counsel's question assumed—if the entire question was based on this hypothesis.

He ends his question by saying, "Where did the energy go?" Not where would the energy have gone if the hypothesis is correct.

Mr. Goldberg: It can't be a hypothesis, Mr. Examiner, and it is not, it is a fact.

Presiding Examiner: Read the question to me, Mr. Reporter.

(The question, as recorded, was read by the reporter.)

Presiding Examiner: I though the witness answered that perhaps before in the previous question. He said it went into the A Banks.

Mrs. Pajalich: That is not the entire answer—if that was his answer to the same question.

Presiding Examiner: Well, that was an answer to a preceding question about where did current go.

Mr. Everett: I think, sir, in the preceding question I was referring to the remainder, taking into consideration not only the 61,000 kilowatts coming in from Hayfield, but also

685

the 69,000 kilowatts coming in from Etiwanda. And in that preceding question, I think I said that in view of

(685)

the fact that the Edison's Form 12 shows that during the period under discussion 6,000 kilowatts was (sic) going from Highgrove to Chino, where did the remainder go.

Now, in this second question, I don't think I mentioned the energy coming in from Etiwanda. I simply mentioned the energy coming in from Hayfield. I think that it is not the same question.

Presiding Examiner: Well, you are absolutely correct in that. The first time you asked him the whole, where did the whole of it go. And now you have asked him where did a part of it go. And undoubtedly if the whole of it went one place, the part of it had to go the same place. That is the point I am trying to make with you. I am not trying to put words in the witness' mouth. I said I thought he had answered the question before.

The Witness: Do you want me to answer it now, Mr. Examiner?

Presiding Examiner: Yes. The pending question.

The Witness: What was the question?

Presiding Examiner: He wants to know—the question is where did 55,000 of the current go that comes from—the remainder of that 61,000 on diagram after, after deducting the 6,000 from it, which leaves 55,000?

The Witness: Well, we are getting into a lot of assumptions

686

here that I don't know that I can follow for sure.

In the first place, on this simplified diagram, you fail to show any oil circuit breakers at all, and we do have six of them at that station. So we have to know something about—if we are going to start attempting to trace flows through this bus, which I suppose is the direction in which we are headed for at least after lunch, we are going to have to know something about whether these oil circuit breakers are closed or open or not, and a lot of other things besides.

By Mr. Everett:

Q. Let's assume, Mr. Montgomery, that these oil circuit breakers to which you referred are closed. A. Well, I think that the only safe thing I can say here at this point, that I can be sure of, is that all of the energy that comes into the bus on the transmission system, and doesn't leave the bus on the transmission system must go into the 1-A and 2-A Banks. There isn't anyplace else for it to go, neglecting losses. I think this is obvious.

Now, how it gets there and where it comes from is something else again.

Q. Mr. Montgomery, is the only source of power for the Highgrove 66 KV buses the energy which is transformed down from the Highgrove 220 KV buses through the two banks of transformers connecting the 220 KV and the 66 KV buses? A. Well, that is the normal source, but it is not the only source, Mr. Everett.

Q. Well, that is the normal source of power for the Highgrove 66 KV bus? A. That is what I said.

Q. Thank you.

Do the 66 KV circuits from the Highgrove 66 KV buses supply the needs of the Colton 66 KV substation?

A. Among others.

Q. What others, Mr. Montgomery? A. Cardiff, for instance, Colton, Cement, Redland, City of Riverside, Yucaipa.

Q. You are talking now about not the circuits on the Colton 66 KV bus, but the circuits on the Highgrove 66

(687)

KV bus? A. I understood that is what your question was directed to. Did I misunderstand?

Q. No, sir, I think we are talking about the same thing. So, it is true, then, that the 66 KV circuits from Highgrove 66 KV buses do supply the needs of the Colton 66 KV substation? A. Under normal conditions, that is right.

Q. Thank you. And do the transformer Banks 1 and 2 connected to the Colton 66 KV buses supply the needs of the Colton 11 KV buses? A. Now we are over at Edison Colton substation?

688

1 and 2 banks at Edison Colton Substation.

Q. Yes, sir, that is correct. A. Yes, those banks serve the 12 KV distribution bus, which supplies, among other customers, the Colton City, Derby and Globe Mills feeders, among others.

Q. And you did say, did you not, that—or maybe you did not, sir—that the Colton 11 KV buses, or I believe as you referred to them, 12 KV buses—— A. Either one.

Q. Supply the two, 11 or 12 KV circuits serving the City of Colton substation? A. That is right.

Q. Well, then, Mr. Montgomery, components of out of state energy received over the Hayfield 220 KV line reach the City of Colton over the facilities which you have just described? A. Boy, we made a big jump in one hop here, didn't we? I don't think I said anything like that yet.

Q. I did not recall in my question that I used the word "you", except to say over the facilities you have described. I don't think I attributed to you any statement, sir. But perhaps the reporter should read the question back.

Presiding Examiner: Read the question.

(The question, as recorded, was read by the reporter.)

689

The Witness: Well, now, the way I am going to answer that question, Mr. Everett, is that the facilities which I have just described are the facilities over which energy is normally served to the City of Colton, all energy.

Mr. Goldberg: I didn't get the last two words.

The Witness: I said all energy—that is served the City of Colton, normally is served over these facilities we have just been talking about.

Mr. Everett: Would you read that last answer back, please, Mr. Reporter?

(The answer, as recorded, was read by the reporter.)

By Mr. Everett:

Q. You did state, did you not, sir, that interstate—excuse me—out of state energy was received by Edison at Hayfield from MWD, and then transmitted to the Edison's Highgrove substation? A. I think, if I remember correctly, what I said was to the effect that energy generated on the N-5 and N-6 Hoover Units of the Metropolitan Water District was transmitted at times, and did reach Highgrove substation. I don't think we ever got it any further than that yet.

Q. Well, referring to Diagram A, which is Exhibit No. 34 for identification, Mr. Montgomery, I think you have agreed that that diagram, showing 61,000 kilowatts coming from

690

MWD into the Highgrove bus, was interstate. Excuse me—out of state energy. A. Coming from Hoover MWD Units, you mean.

(690)

Q. Yes. Well, now, still referring to Diagram A, Exhibit No. 34 for identification, assuming the conditions shown here on Diagram A, could not some of that 61,000—did not some of that 61,000 kilowatts flow down to the Banks 1-A and 2-A? A. I think I said that all of the energy that came into the 220 KV buses at Highgrove, and did not leave those 220 KV buses on a 220 KV transmission line, would have to go into the A banks, and that is for sure, it will.

Q. Yes, and those A banks, sir, as you refer to them, or Banks 1-A and 2-A as they are described in Diagram A, Exhibit No. 34, they lead into Edison Company's 66 KV bus, do they not? A. They sure do. Buses—plural.

Q. And they supply that bus? A. They supply the buses, yes, sir.

Q. And that bus, the Highgrove 66 KV bus, in turn supplies the Colton 66 KV bus? A. It sure does, under normal conditions.

Q. And the Colton 66 KV bus supplies the Colton 11 KV, or I think as you said 12 KV bus? A. That is right.

691

Q. And the 11 KV Colton substation supplies the City of Colton substation? A. That is right. Over two lines—the Globe Mills and the Derby. And I said that all of the energy that is delivered to City of Colton is normally delivered through these facilities that we just described for the second time.

Presiding Examiner: Mr. Everett——

Mr. Everett: Yes, sir?

Presiding Examiner: We will take the noon recess at this time. We will reconvene at 1:45.

(Whereupon, at 12:35 p.m., the hearing was recessed, to reconvene at 1:45 p.m., the same day.)

692

## AFTERNOON SESSION

1:45 p. m.

Presiding Examiner: Are you ready, Mr. Everett?

Mr. Everett: Yes, sir.

Whereupon,

### WILLIAM E. MONTGOMERY

resumed the stand, and testified further as follows:

### Cross-Examination—Resumed

By Mr. Everett:

Q. Mr. Montgomery, referring to Diagram A, Exhibit No. 34 for identification, during ordinary operating conditions, does energy ever flow from the Highgrove 220 KV substation to the Etiwanda generating plant? On this Diagram A, sir, you note we show the flow from Etiwanda to Highgrove. My question is during ordinary operating conditions, does the energy ever flow from Highgreve to Etiwanda? A. It could.

Q. Under ordinary operating conditions, does the energy ever flow from Highgrove to Etiwanda? A. At times.

Q. At times. Could you tell us under what conditions the flow would be from Highgrove to Etiwanda? A. Well, when there is a surplus of power available on the Highgrove 220 KV bus over the requirements of the Highgrove load it can and at times does happen. You should realize that Etiwanda, too, is a part of the 220 KV grid. The

693

220 KV bus at Etiwanda is a part of the 220 KV grid that interconnects all of our generating plants and all of our substations. This lines does not terminate at Etiwanda as indicated by your diagram here.

(693)

Q. Well, how frequently do the conditions under which the flow would be from Highgrove to Etiwanda occur? A. I don't know.

Q. Would they normally occur between 10 a.m., and 10 p.m.? Would those conditions exist during those hours? A. I suppose they could. It would depend upon the operation of the Etiwanda steam plant, amongst other things?

Q. Well, under ordinary operating conditions, would this be likely, that the flow would be from Highgrove to Etiwanda between 10 a.m., and 10 p.m.? A. Well, I am not sure I understand what you mean by ordinary. It could be an ordinary condition, if you were trying to distinguish between emergency and routine by ordinary. What do you mean by ordinary?

Q. Normal operating conditions—where there are no unusual circumstances present. A. Well, we get down to more words now—unusual. The best I can say is that this can and does happen, depending upon the production schedules, operating schedules, of the various production resources on the system.

Q. What is the general direction of flow on the Highgrove

694

Chino 220 KV line? A. Well, that can be either direction, also, depending upon production schedules and loads. You see, Mr. Everett, it is very difficult to answer these general questions of yours, because you assume in this kind of a diagram that a power system is a static situation, and it is always the same, and that readings are generally so and so. And this is not so.

Q. The only reason, Mr. Montgomery, I referred to Diagram A, Exhibit No. 34 for identification, is that that happened to be the last exhibit, as I recall, that we discussed before we took the noon recess, and it does show on it these places which I mentioned in my questions. But if there is some other exhibit which you wish to refer to in answering these questions——A. Well, I suppose if we really wanted to get this in the proper perspective, we would have to take out the entire system single line diagram and talk about it from a system point of view. You like, apparently, to take a small segment of the total system, and then try to describe what really goes on in terms of such a small segment of the system, that it is not realistic, and it is impossible to answer some of your generalized questions, to answer them truthfully.

Q. Well, is it your testimony, then, Mr. Montgomery, that there is no normal direction of flow on the Highgrove-Chino

695

220 KV line—that the direction of flow changes so frequently that you could not say that normally, under ordinary routine operating conditions, that the flow goes in one particular direction? Either towards Chino or towards Highgrove? A. Well, maybe I can best get at the proper answer to your question by trying to explain what really goes on in a large power system like ours. As I have already testified, we have some 37—38 now—I think it was 37 when I testified on direct examination; 38 generating plants now, one has been added, some 92 generators at these several plants, and all of these plants are interconnected on this—most of them on the 220 KV grid. Some of the smaller plants are interconnected through distribution or sub transmission systems.

The production in scheduling, as has been previously implied here, in some of your questions, not only to me, but previously that I have listened to, is that this is done sectionally—we load our generators at these many different locations to take care of sectional load. This is not so. What we are looking at is the total system load, and we attempt to allocate load to our various production resources on the basis of the lowest incremental cost at that time, and consistent with the other obligations to maintain downstream flows in hydroplants, and contractual relationships on

696

interconnections, and other fixed conditions.

Now, we seem to get this clear out of perspective when we take one little piece of the system and say how do you operate this, and what is normal here? We have over 2,000 miles of these 220 KV lines, of which you have only shown a very small part on this diagram A. And the service that goes into this Highgrove bus here comes from the 220 KV system that interconnects all of these 2,000 miles and 90 generators. And Mr. Sack will well know that if we lose a generator way up at Mandalay steam plant, as sometimes we do on a forced outage, that it is reflected down here in this part of the system, and he has less than standard frequency temporarily until maybe a generator at Big Creek picks this up and restores service.

Now, when you try to give me questions here, generalize the point of what happens on this little section of the system, and what is normal here, and divorce it from the total system, it is almost impossible to answer them and answer them truthfully.

Q: Well, sir, I am not asking you to disregard your knowledge and familiarity with the entire Edison system in answering a question concerning just two substations on that system. But I don't think the fact that I am just asking you about two substations on the system should make it impossible for you to state whether the direction of flow between those two points, namely Highgrove and Chino, is one way or the other—that is to Chino from Highgrove or to Highgrove from Chino, under normal conditions. Now, if there isn't any general direction of flow, that is one thing. But if there is, under normal ordinary routine conditions, then I am asking you to tell us what it is? A. And my answer is that it can be in either direction, and that would be under normal conditions in either direction.

Q. Thank you.

And then that answer that you have just given with respect to Highgrove and Chino would also be applicable to the question about the flow between Etiwanda and Highgrove? A. It could be.

Q. Would it be? A. Yes, I said it could be.

Q. Well, would that be under normal ordinary routine conditions—would it be that the flow would be both ways, as you have just stated it was in regard to Highgrove and Chino? A. The flow can be either way, depending upon the production at the various generating plants and the load at the various stations, and if it was we wouldn't consider it abnormal, because we have an interconnected integrated 220 KV grid system.

Q. Well, with respect to this direction of flow, sir, on

the Highgrove Chino 220 KV line, would your answer be any different with respect to the times when large amounts of energy are being received at Highgrove from Hayfield? A. My answer with respect to what, Mr. Everett?

Q. Well, you just testified, sir, that on this Highgrove to Chino line, that even under normal conditions, the flow may be either way. A. Yes.

(698)

Q. You cannot say that there is any—that generally the direction of flow is towards Highgrove or towards Chino, even under normal ordinary conditions—it could be either way? A. Yes.

Q. Now, would your answer be any different with respect to those times when large amounts of energy are being received at Highgrove from Hayfield? A. Large amounts of energy, or large amounts of power? You asked me about power flow in one case and energy reception or receiving of energy in another case. It is a little difficult for me to reconcile those two.

Q. All right, sir. To be consistent in terminology, then, I will say when large amounts of power are being received at Highgrove from Hayfield, would your answer be any different with respect to the direction of flow in the Highgrove-Chino 220 KV line? A. What do you call large amounts of power? How much

699

do you mean?

Q. Well, let's assume that Highgrove was receiving 148,000 kilowatts from Hayfield. Then what would you say would be the direction of flow at that time on the Highgrove-Chino line? A. Well, I would say in the first place that this is not a very practical assumption for present day conditions.

Q. Well, let us just assume, Mr. Montgomery, that Edison is receiving 148,000 kilowatts at the Highgrove 220 KV bus from Hayfield. At that time, what would the direction of flow be on the Highgrove Chino 220 KV line? A. Well, now, we have to make some more assumptions, too. You will have to tell me what the generation is at several other generating plants and what the loads are at several stations, if you want the answer to a hypothetical question like that.

This section of the system, Mr. Everett, as I have attempted in my ignorant way, I guess, to make clear to you, is not separated or divorced or disconnected from the total 220 KV grid system, and from our other sources of generation. And in order to answer these kind of questions, hypothetical questions, where you make one assumption of a power flow, I have to know more than simply one assumption. What is going on at Etiwanda, what is going on at the other steam plants, what is going on at Big Creek, what are

the loads at the several intervening stations. I can't answer a question like that off-hand.

Q. Mr. Montgomery, I did not think my question was unreasonable inasmuch as Mr. Bury asked you if you were intimately familiar with all the properties, operating properties of Edison, and the manner in which they are operated, and you replied "That is correct." A. Yes. But he didn't attempt to give me one known factor and have me project all the rest in a system that serves a million and a-half customers, with almost 4 million kilowatts of generation.

Q. Mr. Montgomery, do you have a copy of the Staff Exhibit No. 3, the power flow data exhibit? A. No, I am sorry, I do not.

(A document was handed to the witness.)

By Mr. Everett:

Q. Would you please turn to page 26, sir, of Exhibit 3? A. April 14th at the top line, is that correct?

Q. Well, starting, sir, from 10 a.m., on April 14, 1958, and going to 10 p.m., on the same date, would you state how much energy was being received hourly at Highgrove

(700)

from Hayfield? A. How much energy was being received hourly?

Q. Yes, sir—at Highgrove, from Hayfield. As reported on page 26 of the Staff Exhibit No. 3.

701

A. I don't see that. I see the rate of power flow as of 10 a.m., on April 14th. I don't think that is the same thing as your question.

Q. Mr. Montgomery, with respect to page 26 of Exhibit 3, starting from 10 a.m., on April 14, 1958, to 10 p.m., of the same date, would you state the rate of flow of power that was flowing from Hayfield to Highgrove? A. The figure shown here opposite the hourly times from 10 a.m., to 10 p.m., in the column "Hayfield to Highgrove, Megawatts," is 148. I can't make out in my copy what—there are two columns under that general heading.

Q. Isn't one, sir, marked half hour and the other hour? A. It may be. I guess it is—hour and half hour. The column on the left is the half hour reading, is that right?

Q. Yes, sir, and on the right is the hour. And 148 megawatts would be 148,000 kilowatts, is that correct? A. It sure would.

Q. Do you know the source of this data that is on page—that is in Exhibit 3, Mr. Montgomery? A. No. Of my own knowledge, I do not.

Q. Was it not obtained from the records of the Edison Company? A. I presume so, but I don't know. I have no reason to doubt that it was.

702

Q. Where does this power originate, Mr. Montgomery? A. By originate, you mean where is it generated?

Q. Yes, sir. A. Well, I couldn't tell from this record, but it could be presumed that it was generated on the N-5 and 6 MWD units at Hoover.

Q. Referring to 2 p.m., on April 14, 1958, Mr. Montgomery, would you tell us the rate of power that was flowing to Transformer Bank 1-A at the Highgrove substation as shown by Exhibit 3? A. 2 p.m., on April 14, sir?

Q. Yes. A. 34, it says here.

Q. That would be 34 megawatts, or 34,000 kilowatts? A. I presume so. On this particular column there is no heading of megawatts, kilowatts or anything else. But I presume it is 34 megawatts. It sounds reasonable.

Q. Thank you. A. It might be amperes. I couldn't tell from this.

Q. And what was the rate of flow of power at this time to transformer Bank 2-A? A. It shows the same amount.

Q. The same amount as Bank 1-A? A. That is right—34. It also shows the total of 34 and 34 being equal to 68.

Q. Thank you. Then, during this hour, according to Exhibit No. 3, 148,000 kilowatts were received on the Highgrove 220 KV bus from Hayfield at a point on the buses between Transformer Banks 1-A and 2-A, which, during the same hour, were taking 34,000 kilowatts each, or a total of 68,000 kilowatts, is that correct? A. That is a little complicated. Could I have that read back, please?

(The question, as recorded, was read by the reporter.)

The Witness: Well, are you asking me in effect does this 68,000 come out of the 148,000?

By Mr. Everett:

Q. No, sir. I am just asking you if it is not a fact if Exhibit 3 does not show that at the time in question, 2 p.m., April 14, 1958, that Highgrove was receiving 148,000 kilowatts from Hayfield, and that energy or power was coming into Highgrove at a point on the Highgrove

220-KV buses between the two transformer banks, 1-A and 2-A, which, at this same hour, were taking 34,000 kilowatts each, or an aggregate total of 68,000 kilowatts. A. Yes, I think that is right. According to this record.

Q. Yes, sir.

Mr. Montgomery, since the 148,000 kilowatts entering the Highgrove 220 KV bus from Hayfield is 80,000 kilowatts more

than is necessary to meet the entire requirements of transformer Banks 1-A and 2-A, would not the excess of 80,000 kilowatts be used to supply Chino or Highgrove—excuse me—Chino or Etiwanda? A. What do you mean to supply Chino or Etiwanda?

Q. Well, perhaps I should use the word furnish, or serve, instead—or deliver, instead of supply. A. You mean to serve Chino substation and Etiwanda generating plant?

Q. Well, I think you have previously testified that with respect to the lines between Chino and Highgrove, and Highgrove and Etiwanda, that the flow may sometimes be from Highgrove to Chino and from Highgrove to Etiwanda, and other times it may be the reverse. A. That is right. But that is a different thing from what you said about serving Chino substation and Etiwanda generating station.

Q. Well, with respect to the excess 80,000 kilowatts, would it not flow to either Chino or Etiwanda, or both of them? A. Well, it would have to go someplace. That is for sure. I cannot tell which one it went to, though, from this.

Q. No, I am not asking you to limit yourself, sir. But would not this excess flow to one or the other, that is Chino or Etiwanda, or to both of them? Naturally if it went

705

to both of them, the full excess won't be going to both Chino and Etiwanda. I appreciate that. A. Well, we are getting into this difficulty again, Mr. Everett, of not having the whole picture involved here. I cannot tell you what happens to this 148 megawatts after once it hits this bus at Highgrove. The best I can say is that the total outflow from that bus, under normal conditions, has to be, neglecting possible losses in the bus itself—has to be equal to the total inflow. This we know. But to try to identify which kilowatt goes where, I cannot do this.

Q. I didn't understand that my question, sir, asked you to do that. You have already stated that Exhibit No. 3 shows that during this hour when the 148,000 kilowatts was coming into Highgrove from Hayfield, a total of 68,000 kilowatts was going into transformer Banks 1-A and 2-A, on the Highgrove 220 KV bus. And I think you have agreed that that would leave 80,000 kilowatts, subtracting the 68,000—— A. Well, the mathematics is correct. But where this goes, or how it goes, I don't know anything about that.

Q. But you agree that after serving the loads on the transformer banks, there is still 80,000 kilowatts remaining? A. No, I didn't agree to any such thing. I said mathematically I agree with you that 148,000 less 68,000

706

represents a mathematical difference between this. But this doesn't go to say that out of the 148,000 there is 68,000 kilowatts that go into these banks, and the rest of it goes either to Chino or Etiwanda. I don't know that.

Q. Where does the remainder go, sir? A. I don't know. You haven't given me enough picture here.

(706)

Q. Well, in my original question about the disposition of this excess 80,000 kilowatts, Mr. Montgomery, I believe I mentioned Chino and Etiwanda. Are there any other places to which this 80,000 kilowatts could go under normal conditions? A. You mean are there any other connections from this bus?

Q. Yes, sir. A. No, there are no other connections from the bus.

Mr. Everett: Mr. Examiner, the staff requests that there be identified a diagram labeled "Diagram B."

Presiding Examiner: It will be marked Exhibit 35 for identification.

(The document referred to was marked for identification as Exhibit No. 35.)

By Mr. Everett:

Q. Mr. Montgomery, referring to Diagram B, which is Exhibit No. 35 for identification, if we have a generator, or a source of electric power, such as at "A" in the

707

Diagram, and that generator is connected to a load by transmission line, and the load requires 50,000 kilowatts, and the generator is producing 50,000 kilowatts, neglecting losses, would you tell us where the electric power for this load comes from? A. It comes from Generator A.

Mr. Everett: Mr. Examiner, the staff requests that there be identified a diagram marked "Diagram C."

Presiding Examiner: This will be marked Exhibit 36 for identification.

(The document referred to was marked for identification as Exhibit No. 36.)

By Mr. Everett:

Q. Mr. Montgomery, referring to Diagram C, or Exhibit No. 36 for identification, suppose we have a generator

"B" producing 100,000 kilowatts of electric power, and instead of one load, we have a number of loads. Would you tell us where the electric power comes from to supply these loads? A. I only see one generator.

Q. Well, would the electric power to supply these loads come from that generator? A. I don't know where else it would come from, on this picture.

Mr. Everett: Mr. Examiner, the staff requests that there be identified a diagram labeled "Diagram D."

708

Presiding Examiner: That will be marked Exhibit 37 for identification.

(The document referred to was marked for identification as Exhibit 37.)

By Mr. Everett:

Q. Now, Mr. Montgomery, referring to Diagram D, Exhibit No. 37 for identification, we connect the ends of the transmission lines previously shown on Diagrams B and C together. A. By this dotted line?

Q. Well, they are connected together, sir, as shown on the diagram. A. I say by the dotted line?

Q. Yes, sir, that is correct. A. Does this dotted line represent a bus connection?

Q. If you wish to consider it that way, you may, sir. The loads all remain the same in Diagram D, and the two generators produce the same as shown in Diagrams B and C. And we add another load of 20,000 kilowatts. Generator A is supplying its load of 50,000 kilowatts, and Generator B is generating 100,000 kilowatts, but had loads on Diagram C totaling 80,000 kilowatts. Now, neglecting losses, does Generator B supply the added load of 20,000 kilowatts in Diagram D? A. I don't know.

709

Q. Would your answer be any different, Mr. Montgomery, if the dotted line shown in Diagram D was considered as being a transmission line rather than a bus? A. Well, it might depend, Mr. Everett. Everyone in this room has heard Dr. Sorensen testify that although a bus—physically a bus in a substation or generating plant has distance physically, but electrically it is only a point. Now, I am not about to attempt to contradict Dr. Sorensen, with my meager education, that is for sure. And if he cannot trace it under those circumstances, it is for sure I cannot.

Mr. Goldberg: May I have the question and answer, please?

(The question, and answer, as recorded, were read by the reporter.)

By Mr. Everett:

Q. I think, Mr. Montgomery, with respect to Diagram B, Exhibit No. 35 for identification, you testified that the load there of 50,000 kilowatts would be supplied by the generator producing 50,000 kilowatts. A. It is a single generator system, as far as this diagram shows, so if there was load being carried, electrical load being carried on a single generator system, obviously it can only be supplied from that single generator.

Q. That is all we are talking about, sir, just what is shown on that diagram B.

710

A. That is what I understand is shown there, what I just said. I guess we are together on that.

Q. Yes, sir. And then with respect to Diagram C, I believe you testified that the load shown on that diagram would be shown by—would be supplied by the source of generation shown there, generator B? A. I think what I said was something to the effect that again I only saw one generator, and considered it a single generator system.

Q. That is all I see there, too, Mr. Montgomery. That is all there is. That is the only generating source shown on the diagram, is generator B.

Now, in Diagram D, the figuration shown in Diagram B and C have been included, have they not? A. Which diagram are we looking at now?

Q. D, sir. A. That is 37?

Q. Yes, sir, Exhibit No. 37 for identification. Now, on there, we have, do we not, the same—we have all the generators and sources that were shown on Diagrams B and C, do we not? A. Well, I assume that these values are the same—I assume that they are the same loads.

Q. Yes. There is another load added on Diagram D. Now, if you were able to tell with respect to Diagrams B and C

the source supplying the loads, why can't you do that also in Diagram D, where we have simply connected the lines together? A. I think I have already explained that, why I can't.

Q. Well, would you state your explanation again, please? A. I said that everyone in this room heard Dr. Sorensen testify to the point that although a bus in a substation or generating plant does in fact have distance from a physical standpoint, electrically it is a point, and that he could not, Dr. Sorensen could not trace flows from a multi-generating source, feeding into that point. And I said if he could not do it, with all of his research and all of his knowledge and all of his years of exploration into the physics of this phenomena, it is for darned sure I cannot.

Q. Well, in response, then, to my question, Mr. Montgomery, with respect to Diagram D, as to whether Generator B supplied the added load of 20,000 kilowatts, it is your answer that you do not know? A. I don't know.

Q. Mr. Montgomery, would you please turn to page 9 of Exhibit No. 3? A. Yes, sir.

Q. And would you tell us the amount of electrical energy being received at Hayfield—excuse me—being received from Hayfield at Highgrove as shown by the readings taken on the hour and the half hour on August 2, 1958, between 9 a.m., and 12 noon? A. According to this record, all I can see is a string of five's in two columns.

712

Q. That would be five megawatts? A. That is what the columns are headed.

Q. Or 5,000 kilowatts? A. Yes, 5 megawatts is equal to 5,000 kilowatts.

Q. And what were the transformer Banks 1-A and 2-A at Highgrove taking during the hour beginning at 11 a.m., August 2, 1958, as shown on page 9 of Exhibit 3? A. 43, it says here.

Q. That is for each bank? A. Yes.

Q. And that would be 43 megawatts, or 43,000 kilowatts? A. I think so. There is no heading on the column, but I think that is probably what it means.

Q. Thank you.

Mr. Everett: Mr. Examiner, the staff requests that there be identified a Diagram labeled "Diagram G."

Presiding Examiner: It will be marked Exhibit 38 for identification.

(The document referred to was marked for identification as Exhibit No. 38.)

713

By Mr. Everett:

Q. Mr. Montgomery, referring to Diagram G, Exhibit No. 38 for identification, can you state whether the 5,000 kilowatts received from Hayfield at Highgrove at 11 a.m., on August 2, 1958, was used to supply the requirements of Transformer Banks 1-A and 2-A at Highgrove, keeping in mind that the 5,000 kilowatts are received at a point on the Highgrove substation between the two transformer banks which, during this hour, were taking 43,000 kilowatts each, or a total of 86,000 kilowatts. A. Well, Mr. Everett, I think I said that the whole bus is a point, and I don't conceive of a point on a point. So, therefore, I can't say that the 5,000 kilowatts is included in the 43,000 kilowatts on either of these A banks. Just can't trace it.

Q. Well, is your answer, then, Mr. Montgomery, that you do not know whether the 5,000 kilowatts shown coming into these buses are from Hayfield, are being used to supply the requirements of the transformer banks 1-A and 2-A? A. No, I don't know.

Mr. Everett: Mr. Examiner, the staff requests that there be identified a diagram labeled "Diagram H."

Presiding Examiner: It will be marked Exhibit 39 for identification.

(The document referred to was marked for identification as Exhibit No. 39.)

714

By Mr. Everett:

Q. Mr. Montgomery, suppose we have a water system which in many ways is analogous to an electric circuit in that a water system has pressure, such as voltage in the electric circuit, and current, such as amperage, in an electric circuit, and a combination of pressure and current—and the combination of pressure and current is equivalent to the gallons per hour or kilowatt hours. And suppose that we have the connections on a water system as shown in Diagram H, which is Exhibit No. 39 for identification.

Mr. Bury: Your Honor, I am sorry. I have sat here very patiently. I am finally going to have to object to this question. I was wondering how much more of the staff's rebuttal case they were going to try to put on through our witnesses.

Now we have reached the point where he is asking the witness to make assumptions directly contrary to the only evidence in this case, and that is the properties of electric energy are not analogous to the properties of water. There is considerable testimony on the part of Dr. Sorensen, in his direct, I believe, which will point out the lack of analogy. That is my objection to this specific question.

I also have a general objection to about what we have gone through for the last hour as being not cross-examination of this witness, but an attempt of the staff to put on its rebuttal case through our witness. If they wish to do so, that

is fine, but if they do, they should be bound by the answers they receive.

Mrs. Pajalich: Mr. Examiner, I should like to add to that this goes entirely apart from the scope of the direct examination. It has no relationship with anything to do with the Edison system. And I should like to characterize this as an inexcusable waste of time.

Mr. Goldberg: Mr. Examiner, let me get my two cents in here.

Transcript page 296 Mr. Montgomery was asked this question, which appears at line 8. "Can you, either through the use of watt-meters or through the use of the A.C. network analyzer, identify the power flow being measured at a point on an interconnected system with the specific generation source producing that power being measured?

Answer: "There is no way that I know to do it."

Now, Mr. Examiner, this cross-examination, as I see it, has been directed to that flat opinion expressed by this witness. And it is entirely legitimate, in cross-examination of the witness, to use diagrams as a means of facilitating the cross-examination. It must be obvious that whatever appears in the diagrams could have been put in question form to the witness, without the diagrams. But I think we all agree that it would have been difficult for the witness under those circumstances, and probably for those of us sitting here in the hearing room, to have retained all of the values in mind, and to have followed the questions.

It seems obvious to me that what the staff has done was to ease that problem by producing these diagrams.

This isn't rebuttal. This is cross-examination.

And as for the contention of Mr. Bury that there is evidence in this record that there is no analogy between a water system and an electric system, I would like to have Mr. Bury show me where that testimony is in the record. As I understand Dr. Sorensen, he doesn't know, he says, the properties and characteristics of what moves through the transmission lines. And if that is the case, how could Dr. Sorensen have conceivably testified that there is no analogy between a water system and the phenomena of an electrical system.

Mr. Bury: I will give Mr. Goldberg a transcript citation shortly if he wishes. But I do draw particular reference to Dr. Sorensen's testimony, the general effect of which is that in the earlier years of trying to understand electrical phenomena, analogies were made to water systems, but as the knowledge of physics increased, they found out that those analogies didn't work, because they were proved not to be correct.

Mr. Goldberg: I would like to see that testimony.

Presiding Examiner: Well, gentlemen, we are not

717

cross-examining Dr. Sorensen now. That is water down the river. We have another witness on the stand.

Mr. Bury: My only position, to this specific question, and to most of the others, is, as the record was quoted by Mr. Goldberg, the witness was asked a question by me if he knew some way to trace, and he said he did not know any way to do it. And I submit he has been asked that question 35 times this afternoon, and 35 times he says he still doesn't know any way to do it. And that is all we are accomplishing.

Mr. Everett: Mr. Examiner, back in December, Mr. Bury was quite indignant when someone attempted, as I recall—and I can't find the transcript now—to cut off some questioning of Mr. Montgomery on the ground of here was a man—I think Mr. Bury used the word plenty—he said here is a man who knows plenty about the operation of electric systems, and he said he should be permitted to go ahead with this question because he was going to bring out some helpful and constructive information.

Now, in December Mr. Bury, in other words, held out Mr. Montgomery as an expert on the operations of electric systems. And it is a little bit difficult for the staff to understand why now, in May, it suddenly becomes inappropriate to try to have the benefit of that expertise.

Presiding Examiner: The objection is overruled.

You may ask the question.

718

Mr. Everett: Mr. Reporter, would you be good enough to read to me that part of my last question that I did state?

(The question, as recorded, was read by the reporter.)

Mr. Everett: Thank you.

By Mr. Everett:

Q. Suppose, Mr. Montgomery, that we have 5,000 gallons of water per hour coming into a water system between two pipes, taking 43 gallons—excuse me—43,000 gallons per hour each, or 86,000 gallons per hour total. Under these supposed conditions, where would the 5,000 gallons of water go? A. I don't know if I can even answer that. I never tried to solve a problem like this in any hydraulic system that I have had anything to do with. Have you ever tried one like this? I guess I could speculate about it. But I don't think—it sure wouldn't be expert testimony. I am not an expert on this kind of a problem, I will tell you that.

Q. Well, do you know or do you not know, sir, where the 5,000 gallons of water would go? A. No, I don't know.

Q. Thank you.

Mr. Montgomery, you have testified that you are generally familiar with the operation of the MWD system, both the electrical and hydraulic, have you not? A. I think I said something to that general effect.

719

Q. In view of the close integration of the operations between Edison and MWD mentioned in your testimony, you are generally familiar with the scheduled day to day operations, are you? A. The scheduled what?

Q. Day to day operations. A. Schedule of what, sir?

Q. The operations, sir, between Edison and MWD. A. Well, only in a general way. Not in detail, sir. Not for the last several years in detail. At one time, I was much closer to that than I have been recently.

Q. Well, for instance, if MWD had any unusual operating plans, would you be familiar with them? A. Unusual operating plans?

Q. Yes. Say, for example, that MWD was not going to operate its pumps, or was going to limit the operation of some. Woud you be familiar with any such planning? A. Generally, this would come to my attention sooner or later.

Q. Well, was there a period during 1959 when MWD's pumps were shut down? A. Well, now, I don't just recall that off-hand, as to dates. There are periods from time to time in which they are shut down. Whether it was in 1959 or the previous year, so help me, I can't say. But they did have a shutdown

720

for some tunnel work, some additional work on the aqueduct system. But I couldn't put my finger now on the date of that, Mr. Everett. I knew about it at the time.

Q. Well, do you recall how long the period was that the pumps were shut down? A. No, I am sorry, I couldn't say. I don't remember.

Q. Well, could you give us any approximation? A. No, I would hesitate to do that.

Q. Well, during this period when MWD pumps were shut down, do you recall whether Edison took MWD's entitlement to Parker energy? A. No, I don't recall. If the pumps were shut down, it would be a pretty safe assumption that this energy did come into the metropolitan water district system. This has happened previously on shutdowns on pumps. In this specific instance that you relate, I don't know exactly what happened.

Q. Well, then, would Edison during this period probably have received MWD's entitlement at Parker? A. This is possible. This would be included in the interchange exchange operation later on when the pumps came on the line. At least it has happened that way in the past. Of course this is an abnormal situation, when these pumps are shut down. They are presently running six strings of pumps, I think.

Q. Well, in addition to the last time that the pumps

or some of them were not operating, do you recall any periods previous to that when similar conditions pertained on the MWD system? A. Not in detail, no, sir.

Q. But were there periods previous to the one that you do recall where the pumps were shut down? A. Sometimes when they shut down the pumps, Mr. Everett, they take the transmission line out of service for maintenance work also. This has happened on more than one occasion.

Q. Well, what I am asking in effect is do you recall more than one period when the MWD pumps or part of them were not operating? A. Well, I couldn't give you the time of day. I suppose that generally I can say that this has happened more than once in the last several years.

Q. And whenever it has happened, do you recall whether Edison received MWD's entitlement to Parker power

(721)

and energy during this period of shutdown or partial shutdown? A. Well, now, this would depend somewhat, as I mentioned a little while ago—in some cases they take out the transmission line at the same time. If the transmission line was out of service, we certainly wouldn't receive it. There just wouldn't be any way to transmit it. In other cases part of the pumps are shut down, and they leave enough pumps on the line to take their own entitlement of Parker power.

722

There may have been times when they had shutdowns to the extent—with the transmission line still in service, when some Parker energy for a short period of time did come to the Hayfield terminal on the metropolitan water district line, and thence to the Edison line.

Q. Thank you. A. Do you have a record there of how many times these pumps have been shut down in the last five or six years?

Q. I do not myself, sir, no. Whether our staff engineers do, I do not know. A. It is quite infrequent.

Mr. Everett: Mr. Examiner, the staff requests that there be identified as an item by reference for incorporation into this record Schedule 18B from FPC Form No. 12, Power System Statement, for the year 1958, filed with the Federal Power Commission by the Metropolitan Water District of Southern California. And the staff also requests—excuse me.

Presiding Examiner: It will be marked Item O for identification.

(The document referred to was marked Item O by reference.)

Mr. Bury: Are you offering the entire Form 12?

Mr. Everett: I think, Mr. Bury, I said Schedule 18B.

Mr. Bury: Do you have a copy that I can see?

723

Mr. Everett: No, sir, I gave my copy to the Examiner.

And, Mr. Examiner, the staff also requests that there be identified as an item by reference for incorporation into this record Schedule 18B from FPC Form No. 12, Power System Statement, for the year 1958, filed with the Federal Power Commission by the United States Department of the Interior, Bureau of Reclamation, covering the Colorado River System Lower Basin.

Presiding Examiner: It will be marked Item P for identification.

(The document referred to was marked Item P by reference.)

Presiding Examiner: Mr. Everett, at this time, we will take the afternoon recess.

(Whereupon, at 3:15 p.m., a recess was taken, until 3:25 p.m.)

Presiding Examiner: Are you ready, Mr. Everett?

Mr. Everett: Yes, sir.

By Mr. Everett:

Q. Mr. Montgomery, you have testified that the United States Bureau of Reclamation owned the 220 KV line from Parker Power Plant at Gene, did you not? A. That is right. A very short section.

Q. Mr. Montgomery, would you please refer to FPC Form

724

No. 12, the Power System Statement of MWD for the year 1958, which I believe has been marked Item O by reference. And I should have said, Mr. Montgomery, Schedule 18B of that Form No. 12.

You now have Schedule 18B before you, sir? A. Yes, sir, page 30.

(724)

725

Mr. Bury: It is so marked?

Mr. Everett: I think so, sir, although I do not have a copy of it myself.

The Witness: I am sorry.

By Mr. Everett:

Q. Would you please state the number of miles of the Parker, Gene 220 KV line owned by MWD? A. Is that this top line you are referring to? Does it say some place that they own the line?

Q. Yes. I believe it would be on the first line of the schedule reading from Parker to Gene. A. Yes, I see that all right. It says the length of the line is three miles.

Q. Three miles? A. Yes, sir.

Q. And now, Mr. Montgomery, would you please refer to Schedule 18B of FPC Form 12, Power System Statement of the USBR for 1958 which I believe has been marked Item P by reference.

The page number there, sir, I think is 31. A. Yes.

Q. And would you tell us the number of miles shown there for the Parker Gene 220 KV line owned by USBR? A. One and seven-tenths.

Q. Thank you, sir.

726

Mr. Everett: Mr. Bury, would you please furnish Mr. Montgomery with copies of Exhibits 1 and 2.

Mr. Bury: Yes.

Mr. Everett: That is the map and the diagram.

Mr. Bury: It is there before him now, Mr. Everett.

Mr. Everett: Thank you.

By Mr. Everett:

Q. Mr. Montgomery, are Staff Exhibits Nos. 1 and 2 correct in showing the division of ownership of this Parker to Gene 220 KV line? A. Well, they probably are so far as I can tell from this. This is a schematic diagram.

Q. Yes.

Well——

Q. The other one has no—well, it has the legend to scale a mile but the distance is so short in any event that it is difficult to scale that accurately.

Q. Leaving aside the question of miles, these two exhibits, namely, Exhibits 1 and 2, are correct in the sense that they do show a division of ownership of this line from Parker to Gene, is that correct? A. Yes. Apparently so, Mr. Everett. My recollection wasn't quite like this, but I have no reason to doubt that the information shown on the Exhibit is correct.

Q. Mr. Montgomery, in defining the term transmission,

you testified, I believe, that transmission means the transmission of bulk power, did you not? A. I recall something to that effect, yes, sir.

Q. And do you recall defining distribution as distribution of electrical energy to the local community? A. Yes.

Q. Mr. Montgomery, the two 11 KV or 12 KV circuits known as Globe Mills and Derby circuits, under your definition of transmission, transmit energy in bulk to the City of Colton substation where the electric power is stepped down to 4,000 volts for local distribution in the City of Colton, is that not correct? A. That is not correct.

Q. Why is that not a correct statement, Mr. Montgomery? A. I have testified that the Globe Mills and the Derby are part of the local distribution system emanating from the 12 KV distribution bus at our Colton substation, that they are part of the local distribution system

(727)

which they certainly are, they cannot be a part of the transmission system transmitting power to Colton City substation.

Q. Well, let us take it a little slower, then. You have said that transmission means transmission of bulk power? [illegible] I sure said that.

Q. And there is no question but what the Globe Mills

728

and Derby circuits do transmit energy in bulk to the City of Colton substation? A. Well, now, we get two kinds of bulk, your kind of bulk and my kind of bulk.

Q. I was not aware that you had previously defined "bulk", but I wish you would do so now. A. Well, bulk power certainly isn't what we transmit to the City of Colton.

Q. Well, I think my—— A. It is what we transmit to Chino substation, what we transmit to Barre substation. It is what we transmit to Colton substation, Cardiff substation. It is what we transmit to something like a couple of hundred substations in the 66 KV subtransmission system but it isn't what we transmit to Colton substation, sir.

Q. Well, going back to one of my previous questions, could you define the word "bulk" in the sense in which you have used it in your definition of transmission? A. Well, transmission of bulk power includes among other things the concept of magnitude, magnitude and distance.

Q. Excuse me—— A. Let my finish, please.

The magnitudes are greater than the magnitudes that are transmitted to Colton City and the distances are longer than the distances in the distribution of energy to Colton City.

729

Q. Well, now, would you define the word bulk for us? A. I did. That is just what I was trying to do, I thought——

Mr. Goldberg: Let us have the answer read then, please.

Mr. Everett: I am sorry. I didn't understand that to be a definition of bulk.

Would you read it back?

Presiding Examiner: Yes, will you read the answer, please?

(The answer, as recorded, was read by the reporter.)

By Mr. Everett:

Q. I don't think you have answered the question, Mr. Montgomery, to define bulk.

Mr. Bury: Is that a question, Mr. Everett, or argument?

By Mr. Everett:

Q. Would you please try again to—would you please define the word bulk as used in your definition of transmission, Mr. Montgomery? A. Well, bulk transmission is the transmission of relatively large quantities of electric power and energy over longer distances than is feasible for the distribution of such energy.

730

Q. I can't catch the last—— A. —than is feasible for the distribution of such quantities of energy.

Q. Why should distance be a criterion? A. Why should it be?

Q. Yes. A. Well, because it is necessary in the operation of a large power system, usually, to locate the productive resources—the production resources at remote distances from the loads, relatively remote, in most systems and transmit large quantities of power over these distances to load centers and in some cases, as in our system, which covers quite a bit of territory, through a subtransmission system to re-transmit from these large load centers bulk power to distributing centers and then

(730)

distribute the energy through the local distribution system from these distributing centers, sir.

Q. You can have bulk transmission without regard to distance being involved, can you not? A. Well, of course, distance is relative.

Q. Well, you told us a few moments ago about the length of line from Parker to Gene? A. I did.

Q. And I think the figures for mileage would total about 4 and seven-tenths miles, would that be about right,

731

the total distance? A. That is approximately what it would total.

Q. I think you said that MWD owned about three miles of the line and that USBR owned about one and seven-tenths of the line? A. I read that from these reports you gave me.

Q. Yes. I realize that.

And those two mileages would total about 4.7 miles. Is that correct? A. Yes.

Q. Do you consider that to be a great distance, 4.7 miles? A. Well, it would be a great distance to try to transmit a couple of hundred megawatts at 12,000 volts.

Q. You say it would be a great distance? A. It should (sic) would.

Q. In other words, it is your testimony that 4.7 miles is a great distance? A. Well, now, you took my answer out of context. Let us read the whole answer back.

Mr. Bury: Did you wish the answer re-read, Mr. Everett?

Mr. Everett: No.

By Mr. Everett:

Q. What about the line from Highgrove to Colton? What is the approximate distance of that line—the length of that line? A. Oh, gee, I don't know offhand, maybe 3, 4 miles, something like that, I suspect. I suppose we can look it up here in the record if you really want to know.

Q. Subject to check, isn't it approximately one and eight-tenths miles? A. O.K. Could be.

Q. Does the transmission of energy from Highgrove to Colton constitute transmission of bulk power? A. Yes.

Q. And yet the mileage length there is only about 1.8 miles? A. That is right. But I would like to add that we transmit several times more power and energy that short distance than we do the distance from the Colton distribution bus to Colton City, which you know as well as I do.

Q. Now, what was another one of the criterion (sic) that you used aside from distance in determining whether certain transmission is transmission of bulk power? A. Distance and magnitude.

Mr. Everett: Mr. Examiner, at this time the Staff requests that there be admitted in evidence Items N, O, P, and also Exhibits 34, 35, 36, 37, 38, 39.

Mr. Bury: Does that complete your offer, Mr. Everett?

Mr. Everett: Yes, that completes the offer.

Mr. Bury: Your Honor, we have no objection to the receipt of any of the items offered or of the exhibits. We would like to request that because Items O and P, or those pages referred to, are not material and readily available to us, if we might ask that Staff Counsel have those pages reproduced and furnish us with copies for our record, although that need not be done immediately.

Mrs. Pajalich: Mr. Examiner, I would like to object to the receipt in evidence of any of these things which

(733)

have been offered by Staff Counsel for the FPC. They don't tend to prove anything which is the ultimate issue in this case and that is the sale of interstate energy, if such there be, to the City of Colton.

These one line diagrams which bear no relation to Edison's system, 35, 36, 37, the incomplete Exhibit 38, the ridiculous Exhibit 39, and these various items which contain schedules on file with the FPC. They neither tend to prove or disprove or shed any light on the only issue here and that is whether any out of state energy is sold for resale to the City of Colton.

Presiding Examiner: Of course, Exhibits 34 through 39 were offered only to illustrate hypothetical questions which Staff was asking.

And you did say, Mr. Everett, that you would make

734

copies of the appropriate pages of Items N, O and P to all parties, did you?

Mr. Bury: Excuse me. Item N was quite a bit of material from Edison's Form 12, as I recall the number of schedules. We of course have our own copies of that.

Presiding Examiner: Schedules 1, 17 and 18-b, Form 12?

Mr. Bury: That is right.

As to Items O and N, on reconsideration, the only questions that were asked with respect to that, as I recall, were some mileages of two pieces of line. Those facts are in the record. I wonder if the items need to come in as such? I think the information—the only information he was questioned about was put in the record. The witness thought the portion was correct.

Mr. Goldberg: Well, except that I think at least there is some question in my mind whether he does anything more than say this is what appears in the report.

Therefore, I think it might be desirable to have it in.

Mr. Bury: All right.

Mrs. Pajalich: Mr. Examiner, if you are seriously entertaining receiving these items O and P at least we could specify the particular page.

Presiding Examiner: One of them was page 31.

Mrs. Pajalich: Not the whole schedule?

Mr. Bury: Might we have the reporter check the identification of those items?

735

It is my understanding that only a single page from each Form 12 was identified.

Presiding Examiner: On Item O, I had noted the information was taken from page 30, on Item P the information was taken from page 31, those will be the only ones that it will be necessary to furnish you.

Mr. Bury: All right.

Presiding Examiner: You will furnish those, will you, Mr. Everett?

Mr. Everett: Furnish Mr. Bury with a copy of Items O and P.

Mrs. Pajalich: And the California Commission, too.

Presiding Examiner: Furnish all parties. If you are making one he may as well make full five.

Mr. Everett: All right, sir.

Presiding Examiner: Items N, O and P will be admitted and Exhibits 34, 35, 36, 37, 38, and 39 will be admitted as illustrations of hypothetical questions.

(The documents referred to heretofore marked as Items N, O and P by reference, and Exhibits Nos. 34, 35, 36, 37, 38 and 39 marked for identification, were received in evidence.)

(735)

Presiding Examiner: Are you ready, Mr. Goldberg?

Mr. Goldberg: Yes.

736

Cross-Examination

By Mr. Goldberg:

Q. I have referred earlier, Mr. Montgomery, to your testimony at transcript page 296, appearing at lines eight through thirteen.

Now, I correctly conclude, do I, based upon your statements to Mr. Everett that you are not about to contradict Dr. Sorensen's opinions in this case, that you testified as you did at transcript 296 for that reason? A. No. I didn't know before I heard Dr. Sorensen's testimony, I didn't know how to trace this.

Q. In other words—— A. I haven't heard anything since I have been here that has taught me how to do it.

Q. Well, then, are you saying that at transcript 296 the opinion that you there expressed was in no way dependent upon anything you were then aware Dr. Sorensen had testified to or has since said in this record? A. Could I have that again?

Mr. Goldberg: Yes, would the reporter please read that?

(The question, as recorded, was read by the reporter.)

The Witness: Well, at the time that I testified, I already heard Dr. Sorensen make this statement, so I don't suppose that I could say that it had no effect. It simply confirmed the confusion that already existed in my own mind on the

737

subject.

Q. Now, this confusion that existed in your own mind on the subject was confusion, then, that had existed before you appeared as a witness in this case? A. Oh, yes.

Q. And before you appeared as a witness in this case, had you ever been called upon to attempt to identify the sources of loads? A. The only time that I remember is in connection with this case. I was asked before I became a witness if this could be done. I was asked this by several people and this brought my attention to the problem. I don't remember whether I ever had occasion before this to attempt this kind of tracing or not in any specific instances, although I was generally aware of the impossibility of doing it and as a matter of fact in the practical operation of the power system it is not a problem. We are not interested in which energy goes where or to try to identify the various sources of generation with respect to the loads that receive this power.

Mr. Goldberg: May I have that answer, please?

(The answer, as recorded, was read by the reporter.)

By Mr. Goldberg:

Q. Now, you say that you have been generally aware of the impossibility of relating or identifying sources of energy

applied to particular loads. Now, do I understand correctly that that was an awareness that didn't come from any effort on your part to do it, is that right? A. Oh, I wouldn't say any effort. I suppose if I was aware of it it took some effort.

Q. Well, I was just wondering. How did you become aware of it, through having made an attempt to study the flows on a system or how did this knowledge of impossibility come to you? A. Well, Mr. Goldberg, during many years of my experience as a substation operator, as a switching center operator, as a dispatcher, it has been necessary and part of my duties in each of those assignments at times to attempt to make what is called

(738)

load studies, and in these load studies an attempt is made to account for generation and load on a power system and in so doing account for it mathematically rather than by identification as to which kilowatt goes to which load from which source and in these kinds of studies over a period of thirty-five years off and on, it has become obvious that making load studies to account for magnitudes of generation and transmission is one thing but to try to identify these power flows by source of generation is impossible.

Q. But these load studies that you were making weren't an effort to identify source, isn't that so? You just said they were a mathematical determination?

739

A. Yes, they weren't.

Q. And is it your testimony—I notice that you were a dispatcher at one time, that in the exercise of your function as a dispatcher you never identified load and source? A. That is right.

Q. Never did? A. Never did. Never had occasion to.

Q. Ah, there is a different thing.

Could you have done so if you had occasion to attempt to identify source and load in exercising your function as a dispatcher? A. Well, I certainly had the opportunity to the extent I found out that you couldn't do it.

Q. Did you ever attempt to do it? A. I couldn't have found out that you couldn't do it otherwise I suppose.

Q. Are you saying that you attempted it? A. O.K., I attempted it.

Q. Just don't say O.K. because you think that is the answer. I want to be sure that you are telling me that you attempted it and you were unable to relate source and load? A. Well, Mr. Goldberg, I attempted to do it to the extent necessary to convince myself that it could not be

740

done.

Q. And were these attempts system-wide or were they related to a particular section of the system? A. I don't remember in detail to what particular section of the system they were related.

Q. Did they ever involve the section of the system with which we are concerned in this case? A. They most certainly must have because I have made load studies over all sections of the systems, repeatedly, thousands of them.

Q. Mathematical load studies? A. Check.

Q. But not the type where you identify source and load? A. Well, the opportunity is available in either case; I mean, you are working with the single line diagrams that have been introduced in this case, similar single line diagrams and you are working with quantities and magnitudes of generation of loads. The opportunity is there.

Q. When you were working with the single line diagrams, did you have buses on those single line diagrams? A. Sure.

Q. There did you treat them as a point? A. Yes.

Q. At all times in your career as an operating electrical engineer it is your testimony that despite the fact

741

that a bus has order of connections and length in your load studies you always treat it, the bus, as a point? A. In the load studies?

Q. Yes. A. I think that is right. I think that is right.

Q. How long does a bus have to be before it is no longer a point? A. Gosh, I don't know.

Q. Is there ever any circumstance under which a bus would not be a point? A. I can't think of any.

(741)

Q. If the bus is a point into which the sources of energy pour, why isn't it reasonable to conclude that what pours into the bus is a mixture and the loads served off that point get a proportion of that mixture? A. Might be one theory. I think there are others.

Q. You know of nothing that you can suggest that would make that an unreasonable inference? Isn't that so? A. Well, I probably could think of alternatives that would contradict it.

Q. I give you the opportunity to tell me what you can bring forward that would show that my inference is an unreasonable one. A. Mr. Goldberg, I simply couldn't identify it. That is

742

all. There isn't any way that I know to tell what happens.

Q. Mr. Montgomery, in answer to questions put to you by Mr. Everett—I don't know whether this is a correct word, but I thought you were protesting about the directing your attention solely to a portion of Southern California Edison's entire system and that it was your position that you cannot discuss what is happening on that segment of the system without considering the total system, is that right? A. Yes, I think that is right.

Q. Isn't it a fact that whatever is happening on the balance of the system would be reflected on the segment being discussed? A. Sure.

Q. So that, if I were to say to you, let us consider this segment of your system, that Highgrove 220 KV bus for example, and I were to say to you, under normal operating conditions, what is occurring on that bus, you as an operating man would know the answer and your answer would be a reflection of everything that is occurring on the system under normal operating conditions, isn't that so? A. In the final analysis, I think that is right.

Q. Your attention was drawn to page 26 of Exhibit 3 where the readings on the half hour and the hour for all of, the

743

hours of that day, I think it was April 14th, were 148 megawatts. Now, as the man who is the general manager of operations of this system, intimately familiar with all the operating properties of Edison and the manner in which they are operated, as you testified on transcript 227, you would know, would you not, that that indicates that the rate of flow was being kept constant at 148 megawatts? A. No, I wouldn't know any such thing.

Q. Why not? A. Because this is not generally what happens on the system.

Q. You say this is not generally what happens? A. That is right. Let me finish, will you, please.

Q. All right. I am sorry. A. As I mentioned in response to a similar question by Mr. Everett, electrical power system, a large power system such as ours is, is not a static situation. There are continual load changes. There are changes in demand of thousands and hundreds of thousands of customers. Although there is a diversity between these customers' demands, it adds up to nevertheless almost a continuous change in demand, and in the electric power business, Mr. Goldberg, there is at least one operation in nature in which supply and demand must be kept in balance at all times. If we have more production than we have demand for that production, we are in trouble.

744

If we have less production than we have demand for that production at any given instance, we are in trouble.

So the problem among other is to maintain throughout this transmission, interconnected, integrated transmission

(744)

network and the local distribution systems which are supplied from it, in addition to the electrical energy which has been confused several times here with power—in addition to the supply of power and electrical energy demands, we must maintain voltage. We must supply reactive KVA and we must maintain frequency. This 148 megawatts, I doubt very much—I have not inspected any charts if they are available for this particular day that you refer to. But on the basis of my experience, I doubt very much if this 148 megawatts—if the pointer of that meter stood there at 148 all day long as this indicates, under certain particular circumstances this could be, but it is very unlikely, and I would guess that probably there are variations.

Most frequently when I observe this very line, this Hayfield delivery to Highgrove, when I observe the remote metering indication on that line in our system dispatcher's office, I find—this is a recording meter and I find a swing on that meter from 5 megawatts one way to 5 megawatts the other, and this is a very normal and natural process. It is part of the business of trying to balance supplies and demands throughout the system.

745

Q. A swing of 5 megawatts one way or the other which you indicate is normal would not detract from the proposition that when the readings at the half hour and the hour are constant that the rate of take has been held constant under those circumstances? A. It might very well average that. This is possible. But one thing we should point out, that when we try to balance these readings—Mr. Sample tried to get at this point and I think maybe did not communicate to everyone present, that when we try to balance these points, that it may well be on these 5 and 10 megawatt swings that the operator at Station A reads on the upswing and the operator at Station B a few seconds later reads on the down swing and you can have very easily a 10 megawatt differential. And when we were trying to find so desperately yesterday one megawatt difference between a study that the Staff made and a study that Mr. Sample made, to be real honest with you it seemed ridiculous because this is usually at least the width of a needle and operators can't read and do not read as accurately as that on switchboard meters anyhow.

Q. Taking all that into account it seems to me that that confirms the proposition that when you run into that type of a circumstance that I have directed your attention to that the reasonable inference is that in that period of time the rate of take over that line was intended to be maintained

constant? A. This very well could be. This may have been the intention. The fact is we have automatic line control to do this.

Q. And as the operating manager you know that has happened on that line? A. Well, as the operating manager I don't know that it happened on this particular date but it is reasonable to assume it. I don't deny it.

Q. I say that condition. I wasn't in my last question pointing to that day. That condition has existed on that line. A. All right.

Q. I have before me Exhibits 35, 36 and 37. Now, as I understand it, when your attention was directed to 35, which shows a single source and a single load connected to that source, you had no problem about saying that the load is supplied by that source, and so, too, with Exhibit 36, where there was a single source and a number of loads connected to that source, you had no problem.

(746)

But in Exhibit 37, when a connection was made, you then testified you could not say which loads were served by which generators, is that correct? A. That is correct. That is what I said.

Q. All right. Now, could you, with your knowledge of the

747

operations of AC electrical systems, push the 50,000 KW of generator A past that load in the lower right-hand portion of Exhibit No. 37, past that load? A. Could I do what?

Q. Could you get it by that load and move it on to the other loads which are connected to Generator B? A. I don't know.

Q. What do you think the reasonable inference would be, that if 50,000 KW is moving away from Generator A, that the load nearest to the source of Generator A, which is equal to the generation on A would be absorbed by that load? Wouldn't you say that is the reasonable inference? A. I simply say, Mr. Goldberg, that I do not know. I have gone over this several times now. On a multiple generator and multipule load system such as represented here, as I understood it from Mr. Everett, I couldn't tell what happens so far as the identification of the source of generation for the load.

Q. Would you just answer my question. Obviously, if we were positive about the answer we wouldn't be in this case, I suppose. But there seems to be an area of doubt and I asked you, absent the positive information isn't the reasonable inference that the load equal to the load on the generator closest to that source of supply would be absorbed by that load?

748

Mrs. Pajalich: I submit the witness answered. He said I don't know.

Mr. Goldberg: I put an assumption to him. I have asked him whether that would be reasonable. I have heard no answer to that, Mr. Examiner.

Mrs. Pajalich: He said I don't know.

The Witness: That is what I was going to say again, I can't answer that.

By Mr. Goldberg:

Q. Suppose I put a switch in that Exhibit 37 in the line at the right-hand portion—I opened it up. Under those circumstances, I suppose you would have no trouble saying that the load, the 50,000 KW load in the lower right-hand corner is served by Generator A, is that right? A. Where did you put the switch?

Q. I put it in that connecting line, that connecting vertical line, I opened it up. A. The dotted vertical line.

Q. And I opened it up. A. Yes.

Q. Under those circumstances, you would say that the 50,000 KW load was served by the generator—Generator A? A. Yes.

Q. The minute I close that switch—— A. Then I say I don't know.

749

Q. Now, under those circumstances when you don't know, in order for you to say that the 50,000 KW load in the lower right-hand corner is not served by Generator A, you have to get the supply from Generator B of 100,000 KW past loads sufficient to absorb that full supply, isn't that right? A. No. I don't have to do anything except say I don't know.

Q. I suppose that is right.

You can't answer my question.

What are your duties as operating manager? A. Gee-whiz, you want a recitation of all of them. We are not going to get through for three weeks.

Q. I don't imagine you can give us every detail. I am interested generally. A. I have four departments, Mr. Goldberg. Operation is one of them. The operation department has about 52 hundred men. I have the industrial relations department with about fifty staff people. Industrial relations is responsible amongst other things for wage and salary administration, employment, labor relations, and that is a lot of headaches. I am responsible for right of way and land department where there are about 220 people, and this is the acquisition of right of ways and the substation sites and generating plant sites, and this is a lot more headaches these days. And I am also responsible for the planning staff, the small group

of highly-specialized and talented engineers, about eight in number who are responsible for the overall short and long range planning of the additions to the system facilities to meet the future demands of our customers. That is a very brief summary, sir.

Q. It impresses me that you have a great deal of responsibility and duties, and because it does, I am moved to ask you whether you are able to keep up and do keep up with the day to day loading on the lines, generation from various sources, and so forth? A. Well, obviously, Mr. Goldberg, I have to delegate a great deal of this detail function.

Q. Does the operating department have any responsibility at all for the preparation of the responses to Form 12? A. Well, as I think I recited before, the basic data certainly comes from the outlying stations, the substations of generating plants and dispatcher's office to the operating engineer's office. I am sure that they do not translate that data on to Form 12. This is done by an engineer staff under the engineering department.

Q. Do you have any responsibility with respect to Form 12? A. Well, here again——

Q. In a review capacity is what I am particularly thinking of.

751

A. We are in a gray area. I certainly have responsibility for the accuracy of the basic information which probably goes into Form 12. I have responsibility for that. But I don't have the responsibility for actually developing the form and making it up and sending it in on time and so forth.

Q. In the process of its preparation does it come at all to you for review? A. Not to me personally, no, sir.

Q. Someone under your direction? A. Insofar as the basic data is concerned, this is true—probably not the form itself, no, once it is completed.

Q. Am I correct that when you defined bulk it came down to magnitude of the volume being transmitted plus distance? A. Yes.

Q. Looking at page 87 of Exhibit No. 3—— A. 87, sir?

Q. Yes. That last column.

I see 1.8 megawatts as the first figure in that column. Is that the kind of magnitude you were talking about when you defined the transmission of bulk over the transmission system? A. No.

Q. But that is transmission in bulk, isn't it? A. The transmission of power but the capability of that system is much larger than that and at times there is much more transmission than that, sir.

(751)

752

Q. Then is the capability that it is the test rather than the amount being transmitted at a particular time? A. Well, in general, in the planning, design and construction of a system, if there isn't any correlation between the capability and the actual practice somebody has made a bad mistake.

Q. But as you recognize there are swings in the amount being carried at particular times and I am just wondering. A. There are probably much greater swings in this than you can find in the Colton City system.

Q. Since the 1.8 is not the kind of bulk you were talking about when you spoke of transmission and mentioned capability, my question to you is, is capability rather than the specific amount traveling at any particular time the test?

Mr. Bury: Test of what?

Mr. Goldberg: Of the bulk, the power?

The Witness: Well, I think I will stick with my definition. I don't see any contradiction here in what I said in this particular figure that you pointed out here so far as the Davis Parker delivery of 1.8 megawatts is concerned.

By Mr. Goldberg:

Q. How about the 3.8 immediately below that, is that bulk—bulk of the kind you were thinking of when you defined transmission? A. Well, let us go back to our distance again—Davis

753

to Parker.

Q. Wait. Just a minute. Let us not, yet. You have two elements, magnitude and distance? A. Yes, and I said them both in the same breath, too.

Q. Is it either/or, or and? A. No, it is and.

Q. It is both? A. We have already been through that with Mr. Everett.

Q. You need both elements to your definition of bulk? A. Yes, sir.

Q. All right. Let us just for a moment stick to this definition of magnitude and I ask whether this 3.8 that I have directed your attention to is the kind of bulk you were talking about? A. And I ask you what distance are you talking about?

Q. I am in the happy position of asking the questions and you are in the unhappy position, perhaps, of having to answer them. A. Well, then, I am saying to you in answer to your question that I have to also consider distance.

If we are talking about two hundred miles, I am real sure that you can't transmit 3.8 megawatts two hundred miles at 12,000 volts.

Q. All right. Now, what distance—what is the criterion that we must use for distance in determining whether

754

it is the kind of distance you are talking about in your definition of bulk? A. Well, again, we can't talk about distance without also taking into account magnitude.

Q. What combination do we need to cross that line from distribution to transmission? A. Well, generally about 30,000 killowatt miles, I presume. Larger conductors, 66 KV, we can go up to 45,000 kilowatt miles very easily.

Q. In other words, before, in your opinion, we have transmission of bulk power, we must have 30 kilowatt miles? A. I think I said 30,000—30 megawatts.

Q. I am sorry. 30,000 kilowatt miles? A. 30 megawatt miles. On that order, generally.

(754)

Q. You mentioned the fact that if somebody was just transmitting 1.8 and they built the kind of line that is involved in Davis Parker to Camino then someone had goofed. That means, doesn't it, that the design of a particular system will depend upon the magnitude of the loads that have to be served? A. Yes. Not what you do with it.

Q. You could have a system where your transmission of power in bulk, such as you have defined it, would be accomplished by lines which on your system you would consider your distribution lines, isn't that so?

755

A. Come again, now?

Q. Sure.

Let us have it read.

(The question, as recorded, was read by the reporter.)

The Witness: No, I don't think that is so.

By Mr. Goldberg:

Q. Are you suggesting that systems that do not—electrical systems—that do not require lines larger than 12 KV do not have transmission facilities as you have defined them? A. Mr. Goldberg, we are talking about a system. Your question is directed to a system.

Q. Is your definition directed just to your system? A. That is for sure.

Q. Now, let me ask you this: Over the Globe Mill and Derby circuits, power is moved down to the City of Colton substation, is that correct, so far? A. Amongst other customers.

Q. Yes.

The City of Colton, when it receives that power divides it and serves its customers, is that correct? A. Yes. I presume so. Very similar to what goes on at Flanco substation.

Q. Where? A. Flanco—F-l-a-n-c-o. Very similar operation.

756

In fact, if I was to take you and Mr. Everett out there and somehow or other cover up the name plates on the fences and show you the distribution system that feeds from Colton Substation to the City of Colton Sub, and show you the one that feeds from Declez to Flanco Sub, you couldn't tell them apart.

Q. I probably couldn't tell the difference between a lot of things you would show me on an electrical system. A. Mr. Harmon and Mr. Miller wouldn't be able to, either.

Q. But I would like to be sure of this.

The power which is sold to the City of Colton for local distribution is divided for delivery to the consumers of the City of Colton system only after the City of Colton receives the power at its substation, isn't that right? A. By divided, I presume you mean transformed from one KV? Is that what you mean?

Q. Divides it up into the service lines. A. I think this is true of the City of Colton, yes. There are other customers on these same circuits, however, before it gets to the City of Colton.

Q. You are talking about the few customers that your company serves off those circuits? A. I am talking about however many there are.

Q. Pacific Fruit Express, for example, that is what

757

you have reference to? A. That is one of them.

Mr. Goldberg: That is all we have. Thank you very much.

Presiding Examiner: Mr. Montgomery, let me ask you a couple of questions about Exhibit 37, will you?

(757)

The Witness: Yes, sir.

Presiding Examiner: On Exhibit 37, the Staff shows a generator, B, with 100,000 KW capacity. And then going out to the right, in horizontal line from that, shows loads off of it, the first load being projected upward, 10,000 kilowatt. The next one is down 20,000 kilowatt. That is 30,000 out of 100. Then another load upward, 20,000. That is 50 of the 100. Then another upward load of 30. That is 80. Then over to the right, in the broken line, there is a load downward there of 20,000. That is the total of 100?

The Witness: Yes.

Presiding Examiner: Then in the line A—I mean in the circle A—the Staff show a generator with 50,000 capacity and then out to the right in another horizontal line they show a 50,000 load. Now, does this current from Generator A run out to this 50,000 line and run down in that hole there and does the last KW of this 100,000 KW in the top line from Generator B—does the last KW of that run into this hole that comes down off of the top horizontal line

758

or is that wire hot on out around the end beyond that 50,000 and the 20,000?

The Witness: Mr. Examiner, that is a very difficult part of the problem.

Presiding Examiner: This wire here, is that wire dead or hot?

The Witness: No, it is hot all right. By hot meaning——

Presiding Examiner: Got current in?

The Witness: It has voltage. Voltage is what makes it hot. It can be hot and actually have no current whatsoever, sir.

Presiding Examiner: What you say is you don't know where that comes from whether it comes from A or B?

The Witness: That is right. I am sorry to say I don't.

Presiding Examiner: The court will be in recess until ten o'clock on Monday morning.

Mr. Bury: Mr. Frazee, I am sorry, before we recess, but I have just about two questions on redirect of Mr. Montgomery and I would like very much to permit him to be excused and go home tomorrow if he could.

Mrs. Pajalich: I have about five.

Mr. Bury: Might we prevail on the parties?

By Mrs. Pajalich:

Q. Mr. Montgomery, referring to Edison Power Statement for 1958, which is filed with the FPC and particularly page 28B,——

759

Mr. Bury: Do you have Form 12 before you?

The Witness: No.

By Mrs. Pajalich:

Q. Do you have it, Mr. Montgomery? A. No, I do not. I am sorry.

Mr. Bury: Would you state the reference again and page, please?

Mrs. Pajalich: 28B.

By Mrs. Pajalich:

Q. I believe it is a map that shows the various provisions for billing purposes of Edison Company, is that correct? A. Yes, that is correct.

Q. You note in response to a question that in the lower corner of the map the words "Commercial Division" appear? A. Yes.

Q. Are there other words that appear there too? A. And distribution district.

(759)

These distribution districts, I might add, though, are not insofar as the operating departments are concerned, associated with these same commercial divisions. Perhaps unfortunately, the commercial departments have their

760

divisions and we in the operating departments have our divisions and they have more divisions than we do and they are not identical and the distribution districts referred to here are operating divisions of the company, geographical areas of the company.

Q. Yes, sir.

Now, referring to the Schedule 18-b which has been referred to, I might almost say ad nauseam today, the items show the estimated loads for the average demand for a 60-minute interval of time at the monthly peak in each quarter of the year, do they not? A. That is what it says.

Q. They do not purport, do they, to show loads or estimated loads or demands of all the other hours for all the other days of all the months of the year? A. No, they do not.

It would take a lot of columns to do that.

Q. Now, referring to Exhibit 37 for identification—preliminary to that prompted by a question of the Examiner, could you tell us what is the speed of electricity? A. Speed of electricity?

Q. Yes. A. Approximately the same speed as light, if I remember correctly.

Now ask me what is the speed of light.

761

Q. Subject to check, would it be 186,000 miles? A. That is the figure I am searching for. I am sorry. I am a little bit dull right now. That is right. That is the effect—that is the speed of the effect of the electrical impulse, which is something sometimes confused in people's minds that that is the rate at which an electron moves through the air. One moves in here and another one, 186,000 miles away electrically moves out at the same time and the effect is transmitted at that rate of speed.

Q. Thank you, sir.

Now, referring to Exhibit 37 for identification, I believe you have a copy of it before you, have you not? A. Which is that?

Q. That is the diagram to which the Examiner was addressing some questions. A. Yes, I have one here.

Q. Looking at the line on which the generator is marked "B"—that is the top line, and going out to the second and third loads on that line, 120,000 kilowatts, the other 30,000 kilowatts—that is on the top of the line—if we assume that those two loads shut down, say, at 6:00 p.m., simultaneously, at six or thereabouts, what generator would you cut back? A. I would cut back on the one that was costing me the most money to operate.

Q. Now, in reply to some questions by Mr. Goldberg, you stated that the City of Colton divides energy which is sold to it by Edison and serves it to its customers prior to delivery of energy by Edison to the City of Colton. Does Edison divide the energy at the Colton Sub to serve other customers than the City of Colton? A. Yes, we do. Off of the same bus we have a number of 12 KV feeders in addition to the Globe Mills and the Derby. There is Loma Linda, and Domic, Mansa, the Bemis circuit and the Cooley circuit, all emanating from this same distribution bus and serving thousands of other customers in the same local distribution system.

Q. On the two circuits that go into the City of Colton could you tell us what customers are served? For what

(762)

customers does Edison divide the energy, to use Mr. Goldberg's expression? A. On the same two circuits that feed Colton City?

Q. Yes. A. Well, Globe Mills serves one customer and there are five or six other customers which I can't identify by name.

Q. That is in the record already, however.

Mr. Goldberg: No, Mr. Ashley——

The Witness: I think so. Mr. Ashley knows about that in detail.

763

By Mrs. Pajalich:

Q. But in any event, the energy is divided by Edison prior to the delivery to the City of Colton, is that correct? A. That is right. I can testify that of my own knowledge because I went out to see them for myself the other day.

Mrs. Pajalich: I have nothing further, Mr. Examiner, of Mr. Montgomery.

Mr. Goldberg: Mr. Examiner, just one question, if I may, in response to a question from Counsel for the California Commission which involved dropping of two loads of 50,000 KW at a particular time on Exhibit 37, the witness responded he cut back the generator that cost him the most money.

May I ask the witness whether that would be the only consideration?

The Witness: No, it wouldn't necessarily be the only one, but it would sure be an important one.

By Mr. Goldberg:

Q. Yes, but you would have to consider your ability to use a particular generator to meet a certain load, your physical abaility to use the generator to meet that load, wouldn't you? A. I don't understand what you mean. What is the physical ability to meet the load? Do you mean the capacity,

764

the capability?

Q. Capacity and other loads that you had to meet at the time off the generator. A. Yes, but I don't think that she—as I understood her question, maybe I misunderstood, I don't think she asked me which one I would take off. She asked me which one I would cut back and I said which one I would cut back.

Q. Of course, a generator generates when you have got a load on it. I start the generator by turning the switch at the load center? A. It is not quite as simple as that.

Q. That is in essence what happens. You have got to have a load to have the generator generating? A. Is that right, Mr. Harmon?

Q. Don't you know? A. Sure I know. But I think you have oversimplified this thing. We are going to be here for another three or four days if I attempt to answer it.

Q. Well, what is the answer? A. Well, a generator is generating voltage whether it has any load or not.

Q. That I realize. But I am talking about putting—— A. Now, it isn't producing any electrical energy output unless there is some input into it, sir.

Q. That is right.

765

Thank you. A. If this input happens to be steam, I can cut back on that steam without taking the generator off the line. That is the way I understood her question.

Q. You were considering that diagram as representing steam generation, were you? A. Or hydro and steam.

(765)

Presiding Examiner: Mr. Montgomery, thank you, and you are indeed excused.

(Witness excused.)

Presiding Examiner: The court will be in recess until ten o'clock on Monday morning.

(Whereupon, at 4:55 o'clock p.m., the hearing was recessed, to reconvene at 10:00 o'clock a.m., Monday, May 9, 1960.)

766

* * *

MONDAY, MAY 9, 1960

The above-entitled matter came on for further hearing, pursuant to recess, at 10:00 o'clock a.m.

BEFORE:

HARRY W. FRAZEE, Presiding Examiner.

APPEARANCES:

(As heretofore noted.)

767

## PROCEEDINGS

Presiding Examiner: The hearing will come to order.

Mr. Ashley, will you take the stand, please.

Are there any preliminary matters this morning?

Mr. Everett: Mr. Examiner, would it be appropriate for the Staff to reply to Mr. Bury's objection to the Staff's offer in evidence of items by reference I, J, K and L?

Presiding Examiner: It would.

Mr. Everett: Well, just to refresh your recollection, sir, you recall that these four items by reference were identified in Volume 5 of the transcript and then the Staff offered these four items by reference in evidence on page

608 of the transcript, and you reserved your ruling on page 609 and then Mr. Bury has made several statements in regard to these four items.

I believe his most recent statements are from pages 634 to 639 of the transcript. These four items were used by the Staff, you recall, in cross-examination of Dr. Sorensen, more particularly in obtaining values and dates for certain hypothetical questions—hypothetical examples. I think there were three in number.

In the first example, of the four values that were used, three of them came from Item I and the remaining value came from Exhibit 3. Then, in the second example, as in the first example, three of the four values came from Item I and the fourth value came from Exhibit 3, and then in the third example, three of the values came from Item K and the fourth value was computed by Dr. Sorensen. That computation appears on page 501 of the transcript and also again on page 505.

Mr. Bury's objection to these items being admitted in evidence is, as we understand it, that they are incompetent for the purpose for which they were used. He says that the readings which the Staff took from Form 12 in connection with these three hypothetical examples were integrated or averaged readings, whereas the readings which the Staff took from Exhibit 3 were instantaneous demand readings, and he says that in doing this, the Staff has mixed apples and oranges.

Well, now, in example three, as we have already pointed out here this morning, three of the four values were taken from the Form 12 and the fourth value was computed by Dr. Sorensen, so the apples and oranges argu-

(768)

ment would not seem to apply to this third example, and the testimony with respect to the third example appears on pages 500 to 505 of the transcript.

Now, clearly, if Dr. Sorensen was able to compute the fourth value, and that is the value you recall for the Highgrove transformer banks 1-A and 2-A, if Dr. Sorensen was able to make that computation in the third example, we believe that he could have done so for the two previous examples had he been asked to do so.

769

Then, Mr. Bury goes on to say that even if you take all the values in these three examples from Form 12, it would only be by accident that these values were coincidental in time and he says that it was Dr. Sorensen's understanding that the values given to him represented conditions coincidental in time. But, of course, assuming without conceding that there is merit to this line of argument, there is no evidence in the record to show that these figures taken from Form 12 were not coincidental in time and Mr. Bury admits that it could be that the values were coincidental in time, although he says it would be an accident. But accidents do happen.

Furthermore, this argument about the Form 12 values not being coincidental in time seems to the Staff to go more, to be directed more to the weight to be given to these Form 12 values, rather than directed to the competency of these values for the purpose for which the Staff used them.

So the Staff now wishes to re-offer in evidence Items by reference I, J, K and L and believes that these items should be admitted in evidence and that the arguments made against their admission by Mr. Bury are without merit for the reasons which we have just stated this morning.

Presiding Examiner: Well, I think the items referred to do have some relevancy, but not too much weight, because you are, as I briefly saw the Form 12—and I have not yet been furnished with copies of it—but they were estimated

values and there has been an attempt on the part of the Staff to compare instantaneous values with estimated values. I would be inclined to admit them at this time. They will be admitted at this time. That is, Items I, J, K and L will be admitted in evidence at this time.

(The documents referred to, heretofore marked for identification as Items I, J, K and L by reference, were received in evidence.)

Presiding Examiner: Miss Reporter, I wish you would have the record show this morning that Exhibit 16 was admitted into evidence at page 538 of the record on May 5.

(The document referred to, heretofore marked for identification as Exhibit No. 16, was received in evidence.)

Presiding Examiner: Mr. Bury.

Mr. Bury: In the same connection, in checking the transcript for last Friday, I notice there is no language or descriptive language identifying Item N appearing in the transcript.

Item N was admitted in evidence at page 735 but the Table of Contents to the transcript does not contain any descriptive language. I think the record should indicate that Item N was identified as Schedules 1, 17, and 18B of FPC Form No. 12, Power System Statement for the year 1958, filed by the Southern California Edison Company.

I believe it was identified or at least there is text

771

in the transcript identifying it at page 735.

I believe page 734 of the transcript——

Presiding Examiner: My notes show that Item N was Schedule 18B, Schedules 1 and 17 of Form 12 filed by Edison for the year 1958.

Mr. Bury: That is correct.

Mr. Cragun: Mr. Examiner, may I inquire if the entire Schedule 1 is admitted and how many pages of that are in evidence? I have been looking at these references that Mr. Bury supplied, but I don't——

Mr. Bury: As I recall, those were offered and identified by Mr. Everett and my understanding was that he identified and offered the entire schedule.

Mr. Cragun: The entire Schedule 1 and 18B?

Presiding Examiner: Schedule 1 and 17 and 18B is the way I have it, Mr. Cragun.

Mr. Cragun: Thank you very much.

Mr. Everett: Mr. Examiner——

Presiding Examiner: Is that correct?

Mr. Everett: Yes.

In reply to Mr. Bury's question, he is correct, it was the Staff's intention to include the entire schedules which you have just mentioned, sir, Nos. 1, 17 and 18B.

Mrs. Pajalich: Mr. Examiner, may the record be corrected too in this respect: at the top of page 761.

772

Presiding Examiner: 751?

Mrs. Pajalich: No, 761.

The question now reads: Subject to check, would it be 186,000 miles.

It should be 186,000 miles per second. As it stands now, it is meaningless, and I said per second but perhaps the reporter didn't get it.

Presiding Examiner: The words "per second" will be added on line 1 of page 761.

Mrs. Pajalich: Thank you.

And, Mr. Examiner, I understand that some of the letters which have been sent to this Commission have not yet been placed in the formal file. May I ask that the letters of the Public Service Commission of the State of Nevada, dated March 9, 1960, be made a part of this record by reference. In that letter, the Secretary of the State of Nevada Public Service Commission states:

> "Gentlemen, we wish to quote our letter of September 3rd, 1959.
>
> "This Commission wishes to be entered in this proceeding as an interested party to receive the final findings and orders of your Commission."

It was not this Commission's intention of entering into this proceeding except from the point of receiving the final findings and order of your Commission. The Public Service Commission of Nevada has no other interest in this case.

> "Very truly yours, Public Service Commission of Nevada, C. N. Newell, Secretary."

Presiding Examiner: They wish to be entered as an interested party. I understood you to say an interrupted party—an interested party, isn't it?

Mrs. Pajalich: For the purpose of receiving the Commission's Order but for no other purpose.

Yes. May that be given an item number and incorporated by reference, sir?

(773)

Presiding Examiner: Well, you just read it into the record so it is a part of it now.

Mr. Bury: I am not sure that is very clear. This part about interested party is a quotation from an earlier letter from the Commission dated September 3. I might explain that this letter of September 3, 1959 of the Nevada Public Service Commission contains the language quoted. It had raised a doubt in my mind as to whether or not they were entitled to service of copies of exhibits, et cetera, and I telephoned and talked to Chairman Allard of the Nevada Commission. As a result of that telephone conversation he wrote this letter of March 9, 1960 which was intended to clarify the position of the State of Nevada Public Service Commission.

Mr. Goldberg: Of course, I don't know whether it clarifies it or whether anything needed clarifying, but it seems to me

774

that is a matter between the Commission and the Secretary's office of the Federal Power Commission.

I have no objection to its having been read into the record by Counsel for the California Commission.

Presiding Examiner: I gather what the Commission said was that they would like to have a copy of the decision.

Mr. Goldberg: That is right.

Presiding Examiner: Are you ready, Mr. Everett?

Mr. Everett: Sir, we have just one other preliminary matter.

You will recall and Mr. Bury will recall that during the Staff's cross-examination of Edison's witness Sorensen, Sample and Montgomery, respectively, each of those witnesses agreed that certain statistics cited by Staff Counsel were correct subject to check by the witness.

I was wondering now at this time whether Mr. Bury could tell us whether there was any question regarding the question of the correctness of those statistics?

Mr. Bury: My understanding was that there were certain mathematical computations, additions, subtractions or multiplications and it is my understanding that each of the witnesses after leaving the stand reviewed those figures and has not reported to me that the figures are incorrect, so as far as I am concerned the mathematics are correct.

Mr. Everett: Thank you.

Whereupon,

C. L. ASHLEY

resumed the stand and testified further as follows:

Mr. Bury: Mr. Examiner, I believe the other day I indicated that when Mr. Ashley resumed the stand we were to identify and offer an additional exhibit which contains some photographs which were distributed, I believe, Friday to everyone in the room.

Did the Examiner receive a copy?

Presiding Examiner: Yes, I have a document marked "Photographs of Certain Facilities of Southern California Edison Company related to Service in and Around the City of Colton."

Is that what you mean?

Mr. Bury: That is the document to which I referred and if there is no objection, we would like to have that identified at this time.

Presiding Examiner: It will be marked Exhibit 40 for identification.

(The document referred to was marked for identification as Exhibit No. 40.)

(775)

### Further Direct Examination
### By Mr. Bury:

Q. Mr. Ashley, was Exhibit 40 for identification prepared by you or under your supervision?

776

A. Yes, it was.

Q. Were the photographs contained in the clasped envelope taken by you? A. Yes, they were.

Q. Would you briefly explain what is shown on Exhibit 40 and in the photographs? A. Exhibit 40 consists of a folder on the inside of which there is a description of twenty designated pictures, this index being on the right-hand side.

On the left-hand side of the folder is an envelope in which there are twenty photographs corresponding to those identified in the index.

Q. Each of those photographs bears a number? A. Yes. Each photograph bears a number in the upper right-hand corner.

Q. And those numbers correspond with the numbers on the tabulation on the right-hand side? A. Yes.

Q. Do the descriptions contained in that list accurately identify what is shown in each of the respective photographs? A. Yes, I think they present a brief title of what may be seen in the photographs and are accurate.

Mr. Bury: We would like to offer Exhibit 40 in evidence at this time.

777

Presiding Examiner: I will reserve passing on it until after the cross-examination.

Are you ready, Mr. Everett?

Mr. Everett: Yes, sir.

### Cross-Examination

### By Mr. Everett:

Q. Mr. Ashley, you have testified that a new contract was entered into by Edison with the City of Colton in 1941 which continued the same rate in effect but provided a reduction in billing by adoption of a power factor discount.

What was this reduction in percentage of former rate? A. The reduction is the effect which a power factor discount would have had on that rate. I don't have any value in mind as to the nature or extent of the reduction or at that time the character of power factor which the City of Colton had.

Q. Could you furnish us, later, sir, with this reduction in percentage of the former rate? A. Well, the reduction in rate which would result would depend on the characteristics of the customer in a particular period of time and as the power factor provision is set forth in the 1945 contract——

Q. Excuse me, sir, I did say '45. I meant to say '41. A. The '41 contract?

Q. Yes. A. It would have been the same discount, I believe, as

778

is set forth in the '45 contract.

Q. Well, of course, what we are talking about here is just the contract that was entered into by Edison Company with the City of Colton in 1941, not with any other customers. We do have a particular customer here in the City of Colton. A. Oh, I understand that, but the power factor provision which was included in the 1941 contract as well as in the 1945 contract, for that matter, is the same one that had been in our rate schedules for a num-

(778)

ber of years, but had not been previously included in the case of Colton in the contract with the City of Colton.

Q. Well, could you just tell us what reduction in billing resulted in 1941 when you entered into this new contract with the City of Colton? A. Well, not from information I have available here.

The form of the power factor provision, of course, is one that is both a penalty and a discount and it does have upper limits. It could be as much as a 10 per cent increase charge and as much as a 10 per cent discount, somewhere between those two values would have represented an effect on the City of Colton billing of the power factor provision.

Q. Sir, I received the impression from your direct testimony that as a result of the contract entered into in '41 there was a reduction in billing to the City of Colton, but what you have just said now indicates that there might have been

779

an increase? A. No, I indicated the form of the provision could have resulted in either.

In other words, I am being questioned about a form of a provision applied to a condition on which I don't have information immediately available. I am sure there probably was a discount to some degree, even though it may have been at that time minor.

Q. And there was a reduction, then, in billing as a result of the—— A. I presume, subject to checking the records that there was, yes.

Q. I believe that is what you did testify on direct, that this new contract entered into in 1941 by Edison with the City did result in a reduction in billing? A. Well, either a reduction or an opportunity for a reduction if they improved the power factor of their service.

Q. What was the percentage of the reduction in rates provided by the October 1, 1945 contract, referred to in your testimony? A. I believe one of the exhibits here comments on the character of such adjustment.

While I do not have available the records here of what the effect of that was, an indication of such change in rate is shown in Exhibit No. 20 in this proceeding which is Decision No. 38461 of the California Commission. The second page of that indicates the difference in rates between the two contracts and points out the areas of demand and of energy wherein changes in rate occurred and that would be used of course as a basis for that, based on some year, such as 1945.

Q. Mr. Ashley, in what respect did this contract, the October 1, 1945 contract, Exhibit 5, give recognition to the growth of the city's electric requirements as you have testified? A. In what way did it?

Q. In what respect did it? A. It provided a lower demand charge for demands in excess of 3,000 kilowatts. So that if the city's load was growing beyond 3,000 kilowatts the demand charge for increased demands would be less and also provided for a lower energy charge when the load factor expressed in kilowatt hours per kilowatt was beyond a point, in this case 400 kilowatt hours per kilowatt.

Q. Well, did this 1945 contract result in a decrease in the rates which were provided in the 1941 contract? A. I believe so, but again it would depend on the record as to whether the demands were in excess of 3,000 kilowatt hours and whether the usage was in excess of 400 kilowatt hours per kilowatt.

Q. How, then, were you able to testify, sir, that there

781

was a percentage of reduction—that there was a reduction in rate provided by the October 1945 contract, Exhibit 5? A. Again, it was dependent upon the conditions at that time. I don't have the record as to what it was and I believe that the City of Colton's demands at that time were in excess of 3,000 kilowatts. If not in recognition of the growth mentioned it was anticipated that it might reasonably be in the reasonable near future.

Q. But you did testify, did you not, that there was a reduction in rates provided by the October 1945 contract? A. I think it is a reduction in rates upon meeting certain conditions.

Q. Well, conditions must have been satisfied or met in order for there to have been that reduction to which you testified? A. That is correct, a load factor condition and a total maximum demand condition—billing demand condition.

782

Q. Mr. Ashley, you testified that Edison entered into other contracts for a resale service containing similar rates.

With whom were these other resale contracts signed? A. There had been one signed previously with the City of Anaheim and I believe that in the company's application for the 1945 contract shown in Exhibit 19, that that is pointed out, that the contract, meaning the 1945 contract is consistent with agreements for resale service recently entered into with the City of Anaheim, having somewhat comparable load conditions.

That answer is one phase of it.

Similarly with the City of Azusa, a contract similar to the Anaheim contract was also entered into, and with the

City of Riverside, there was a contract entered into which was not the same as to rate of the Anaheim, Colton and Azusa contracts.

Q. Mr. Ashley, you testified that decision No. 50449, dated August 17, 1954 by the California Commission—that is Exhibit No. 21—required Edison to file a revised tariff schedule designated Schedule R and required the termination of conjunctive billing.

Was this decision the result of an application filed by Edison requesting the California Commission for such an order? A. This was the result of an application filed by Edison

for its first general rate increase in a period of, I believe it was over 30 years, and an endeavor to bring its rate structure up to an appropriate level insofar as revenues were concerned and also the structure into better form as to simplicity and to eliminate certain types of practices which had grown up, among these being conjunctive billing.

Q. Then with respect to decision No. 55703 dated October 15, 1957, by the California Commission which is Exhibit No. 22, was this decision also the result of an application filed by Edison? A. Yes.

Q. Well, then, both decisions by the California Commission were the result of requests filed by Edison and were not based on actions originating with the California Commission; is that right? A. They were based on applications filed by Edison.

Q. Sir, you have testified that Pacific Fruit Express is served from the Globe Mills 11 KV circuit.

Will you state the voltage and describe the facilities which are used to serve this customer? A. There are six 500 KVA transformers, a total of 3,000 KVA, delivering service to Pacific Fruit Express at 2400 volts, three phase.

Q. Well, in regard to this service of Pacific Fruit Express, there is a stepdown in voltage from 11,000 to 2400?

784

A. No, we call it 12,000—12 to 2400, yes, sir.

Q. I believe you also testified, Mr. Ashley, that a railroad section house and several lighted billboard signs were served from the Derby 11 or 12 KV circuit. Would you state at what voltage and over what facilities these customers are served and also the number of billboards served? A. Well, as to the exact number of billboards served, I don't know. I recognize two of the names here as being prominent billboard people, so I can discuss it more in terms of the meters there involved. There are a total of four accounts which I believe are for billboards.

Mr. Goldberg: Let me understand: Four accounts off the Derby circuit?

The Witness: Yes.

Mr. Goldberg: Four billboard accounts.

The Witness: And two accounts for the railway section house and one for an individual at that same point.

I believe you asked the voltage of these.

By Mr. Everett:

Q. Yes, sir. A. That is standard single phase service, 120/240 volts.

Mr. Goldberg: May I ask a question at this point? The single phase refers to the individual also? You said this was single phase service. Did that refer to the individual who was served off the Derby circuit also, or did I misunderstand?

785

I thought you said there were four billboard accounts, two railroad sections and one individual?

The Witness: Yes.

Mr. Goldberg: Is this individual getting single phase service?

The Witness: All of these accounts are serving single phase service.

Mr. Goldberg: That is what I wanted to be sure of, thank you.

By Mr. Everett:

Q. With respect to these customers other than the City of Colton which are served from the Derby and Globe Mills circuits, Mr. Ashley, are the sales to these other customers made from the low side of the transformers? A. I don't quite understand the question. The first part bothered me a bit.

Q. Well, are all these sales—— A. Now, which sales do you mean, Mr. Everett?

Q. All of them from the Derby and Globe Mills circuits. A. Oh.

Q. Are they made from the 12 or 11 KV circuits? A. The deliveries are made to transformers connected to the 12 KV circuit and the customers are served from the secondary sides of those transformers.

Q. Are the sales metered on the low side or the high

786

side of the transformer bank? A. On the low side, secondary side.

Q. Is that true both as to the customers served from the Derby circuit and the Globe Mills circuit? A. Yes.

Q. You stated that Edison served in addition to the City of Colton a number of other customers within Colton City limits.

(786)

Will you describe the facilities used to serve these customers and their locations? A. As of the time of preparing the survey and following the proceedings before in this case,—and general inspection was made of the various methods of serving the customers in the City of Colton—there were 100 such customers, not including the resale account of the City of Colton.

In serving these accounts, six 12 KV circuits are employed and one 66 KV circuit, 66,000 volt circuit, and there are a total of approximately 14,000 KVA transformer capacity involved in serving these customers.

Now, that is a general outline of our service in Colton as to total numbers.

Q. You have testified that you have been in rate work for many years with Edison and have been in charge of Edison's rate department since May 1951, have you not? A. Yes.

787

Q. In connection with your rate work and particularly with regard to Edison's contracts with the City of Colton, did you look into the question of regulatory jurisdiction? A. No, I don't believe there was any looking to be done, We were subject to the jurisdiction of the California Commission.

Mr. Everett: May I have that answer read back, please?

Presiding Examiner: Yes.

Will you read it, Miss Reporter, please?

(The answer, as recorded, was read by the reporter.)

By Mr. Everett:

Q. Did you consider, Mr. Ashley, in connection with these Edison contracts with the City of Colton whether some other regulatory Commission might have jurisdiction? A. What do you mean by "these contracts", Mr. Everett?

Q. Well, any of these contracts which we have mentioned here this morning. I think we have referred to the 1941 contract and then later there was mention made of the 1945 contract. A. No.

Q. Did you not consider whether some regulatory commission other than the California Public Utilities Commission might have jurisdiction? A. No.

788

Q. On your return to Edison from the Navy in 1945, did your expanded responsibilities include the execution of the October 1, 1945 contract, Exhibit 5, or are you familiar with the negotiations with the City of Colton at that time? A. No, I am not. I returned back to work from terminal leave at just about the same time that this contract was executed and it represented, of course, simply continuing what had not been done in the Anaheim contract, so I was not in any way involved with it.

Q. Thank you.

Well, in 1945 when this contract was entered into by Edison with the City of Colton, Mr. Ashley, what consideration was given to the question of Federal Power jurisdiction—Federal Power Commission jurisdiction—over Edison's sale to the City of Colton at that time, do you know? A. I don't know.

Q. Mr. Ashley, do you know that in 1945 a total of 1,754,629,700 kilowatt hours were generated at Edison's Hoover generators out of a total system generation of about 5.6 billion kilowatt hours? A. No, I didn't know that, as to figures.

Mr. Everett: Mr. Examiner, the staff requests that there be identified as an item by reference for incorporation into this record Schedule 1 from Southern California

**(788)**

**Edison Company, Limited, FPC Form No. 12, Power System Statement for**

789

the year 1945.

Presiding Examiner: It will be marked Item Q for identification.

(The document referred to was marked for identification as Item Q, by reference.)

By Mr. Everett:

Q. Mr. Ashley, can you determine from an examination of Item Q by reference—and that, sir, was Schedule 1 from Edison's Form 12 for the year 1945—could you tell from such an examination whether approximately 1,754,629,700 kilowatt hours were generated at Edison's Hoover generators out of a total system generation of about 5.6 billion kilowatt hours? A. Yes. Those figures show here. However, they are subject to some footnotes with reference to disagreement with the U.S.B.R. Boulder report and some adjustment evidently for substitute generation for the Defense Plant Corporation during the early part of 1945.

Q. At the date which we are talking about, Mr. Ashley, 1945, was the Hoover power being delivered to Chino and was Colton substation being served out of Chino? A. I do not know as to physical plant history of that type.

Q. Do you know why the October 1, 1945, contract was

790

not filed with the Federal Power Commission as a rate schedule? A. No, I do not.

Q. Prior to putting the increased rates into effect September 13, 1954, approximately ten years later, did Edison then consider the question of Federal Power Commission jurisdiction over the sale to the City of Colton? A. Not in the sense of considering it by filing a rate schedule, no.

Q. Did Edison at that time, sir, in 1954, give any consideration to the question of whether the Federal Power Commission had jurisdiction over Edison's sale to the City of Colton? A. Well, I can't answer for what Edison thought.

Q. Pardon me, sir? A. I can't answer as to what Edison thought.

Q. Well, you as manager of the rate department played an active part in Edison's activities with respect to rate regulatory jurisdiction, did you not? A. Well——

Q. Did you not, and do you not now? A. Well that is rather embracing—rate regulatory, whatever you said there, Mr. Everett.

I did have a great deal to do with that proceeding as to prescribing the form of rate and the spread of the increase to the customer groups and form of rate schedules, the

values to go into rate schedules and provisions of the rate schedules, and matters of that kind.

Q. Well, as manager of the rate department, sir, is not one of your responsibilities to look into the question as to where Edison's rate schedules should be filed? A. No. I would say that is a legal matter.

Q. Let me put my question in another way, sir. As manager of the rate department, do you not have responsibility for insuring that the rate schedules for Edison's electric service are filed with the regulatory commissions? A. No.

Q. Well, I understood that you testified on page 320 of the transcript that your responsibilities did include the supervision for filings of rate schedules with the regulatory authorities? A. Is that in my direct?

Q. That was the impression I got from reading your direct testimony on page 320 of the transcript, sir. A. It says there including filing for the California Public Utilities Commission. You asked me a question with reference to Commissions, plurally, and I said no.

Q. Do you consider that your responsibilities didn't extend beyond supervision of the filings with one Commission, is that it? A. No, I don't think that quite is. The only Commission

with which we made filings is the California Public Utilities Commission and a determination of whether there are other commissions involved is a matter of the law department or legal division.

Q. Well, with respect to this increase of rates that went into effect on September 13, 1954, did you consult with the law department as to whether the Federal Power Commission had jurisdiction over these rates? A. No. Upon receipt of that decision from the California Public Utilities Commission I proceeded to prepare a filing in accordance with the order of that and among others I did check with the law department as to the action we were taking as to complying with the order of the California Commission.

Q. Well, prior to filing the application with the California Commission, which resulted in the decision which you just referred to, did you consult with the law department in regard to whether the Federal Power Commission had jurisdiction over Edison's electric service to the City of Colton? A. No.

Q. Mr. Ashley, as manager of the rate department, were you ever advised that Edison's wholesale electric service to the City of Colton was subject to the jurisdiction of the Federal Power Commission and that the rate schedule for this service should be filed with the Federal Power Commission? A. No.

793

Mr. Everett: Mr. Examiner, the staff requests that there be identified as an item by reference for incorporation into this record a copy of a letter dated November 2, 1953, addressed to Bruce Renwick, Esq., General Counsel, Southern California Edison Company, signed by Leon M. Fuquay, Secretary, consisting of two pages, and contained in Federal Power Commission file entitled "Southern California Edison Company, Electric Correspondence, Part 1."

Mr. Examiner, the staff requests that you take official notice of the fact that Leon M. Fuquay on the date of this letter was Secretary of the Federal Power Commission and signed the letter in that capacity.

Presiding Examiner: Official notice will be taken of that fact.

Mr. Everett: Thank you.

Presiding Examiner: I notice you distributed copies of that letter. Do you have one for the examiner?

It will be marked Item R for identification.

(The document referred to was marked for identification as Item R, by reference.)

Mr. Bury: Mr. Everett, to clear the record, am I correct that this letter you have just identified, Item R, which bears the date November 2, 1953, is the same letter which appears as the third letter in order in Exhibit C to Edison's motion to dismiss but which bears no date.

794

Have you compared those?

Mr. Everett: Yes, sir, I believe that is right. I know an undated copy of this letter is attached to your motion to dismiss.

You said it was the third letter in Exhibit C.

Mr. Bury: In Exhibit C to Edison's motion to dismiss.

Mr. Everett: It appears to be the fourth letter, Mr. Bury.

Mr. Bury: That is right.

By Mr. Everett:

Q. Mr. Ashley, do you have before you Item R by reference? A. That is the November 2, 1953, letter?

Q. Yes, sir. A. Yes.

Q. Mr. Ashley, referring to Item R, Edison was advised by this letter, was it not, that Edison's wholesale sales to the City of Colton were subject to the jurisdiction of the Federal Power Commission and that the rate schedule for this sale should be filed with the Federal Power Commission?

Mr. Bury: I will object to this question, Your Honor. The item speaks for itself, although I will stipulate that that is the general content of the letter.

795

By Mr. Everett:

Q. Was this Item R ever brought to your attention, Mr. Ashley? A. I was aware of the general correspondence which had occurred on this subject and I heard reference to it, including that which followed it. Also as to a complete reply setting forth by the Company of the reasons why we thought the suggestion made in Exhibit R was not properly construed.

Presiding Examiner: We will take the morning recess at this time.

(At this point, 11:15 a.m., a recess was taken until 11:30 a.m.)

Presiding Examiner: Are you ready, Mr. Everett?

Mr. Everett: I will be in just a moment, sir.

By Mr. Everett:

Q. Mr. Ashley, with reference to Edison's Exhibit No. 23—you will recall that was the sales and revenue data exhibit which compared Edison's records and reports with the City of Colton reports for the period 1954-1958? A. Yes.

Q. Can you tell us by how much the revenues shown as being collected from the City of Colton for the period 1954 through 1958 under the 1954 rate increase and 1957 rate increase exceeded the revenues that would have been collected had the billings for the sales been billed under the October 1,

1945 contract? A. In the 1945 contract there was the practice mentioned before of conjunctive billing which required the use of meters to obtain a billing demand. Those meters were removed when they were no longer used, after the 1954 California Commission rate case decision.

So, therefore, there is no data to do that. We do have in the record, however, Mr. Sack's study of that effect, as I recollect. I don't recall the exhibit number, but he made some estimates of that time.

Q. That would be Exhibit No. 6. A. I believe——

Mr. Bury: Have you seen a copy of the Exhibit 6?

The Witness: I have seen a copy. I don't have a copy with me here.

(796)

By Mr. Everett:

Q. Going back to my prior question, Mr. Ashley, would it be possible for you to make a computation as to the amount of revenues which Edison has collected as a result of these 1954 and 1957 increases over and above what it would have collected had the rates set forth in the October 1, 1945 contract remained in effect throughout this period? A. Well, a computation could be made, of course, but it would involve a number of estimates as to what billing demands were, and that is what we endeavored to learn something about

797

from Mr. Sack during this proceeding, as to what procedure he had followed.

I haven't attempted, nor under my direction have I attempted to reflect those billing elements.

Q. Have you examined Mr. Sack's exhibit? A. In a—

Q. No. 6. Isn't that the number? I don't have it in front of me. You have it? A. Yes. It is.

Q. Have you examined that, sir? A. Yes, I have examined that and could not understand it, frankly, as to how he reached certain conclusions that he has in here, however.

Q. Do you agree with the amounts that are shown in that exhibit with respect to excess charges? A. I don't agree that they are excess charges, nor have I prepared any check, as I testified, so that I can agree with the amount.

Q. Would it be possible for you to make such computations, Mr. Ashley? A. It goes a great deal more than just making a computation. It involves a number of assumptions which must be made. It is easy enough to add kilowatt hours, but there are these other elements of the demands of the City of Colton pumping plant which were billed under the 1945 contract and that is the

798

area in which difficulty would arise and I dare say different people would get different answers based on what appeared at least to them reasonable assumptions.

So it is not a simple matter of a computation in the sense that you are suggesting here.

Q. Well, are the revenues which Edison has collected under the 1954 and 1957 rate increases greater than would have been collected under the October 1, 1945 contract rates? A. The question is not clear to me, Mr. Everett, whether you are talking about the increased amounts or what. I don't understand the question.

Mr. Bury: Mr. Everett, are you asking him to assume that the rates which are reflected on pages 2 and 3 of your Exhibit 5 have been used for the purpose of billing Colton from 1945 to the present time? Is that the assumption you want him to make?

Mr. Everett: Would you repeat that statement, please?

Mr. Bury: Let's have the reporter repeat it.

Mr. Everett: Will the reporter read back Mr. Bury's statement?

(The statement, as recorded, was read by the reporter.)

Mr. Everett: Yes, Mr. Bury. I am referring to the rates set forth in the Exhibit 5, the October 1, 1945, contract between

799

Edison and the City of Colton. That is to be taken into consideration in my question.

Well, let me put it another way, Mr. Ashley. As a result of these rate increases which you testified under direct examination were put into effect in 1954 and 1957,

(799)

has Edison Company received more revenues than it would have received had the service been continued to be rendered by Edison to the City of Colton in accordance with the rates set forth in Exhibit 5 which is the October 1, 1945, contract?

Mr. Bury: Your Honor, I am going to object to the question because of the words "in accordance."

I have the impression that he may be implying in the question that a request for a legal conclusion, whether or not those billings were in accordance with the terms of the contract. I don't think the witness ought to be asked to construe the 1945 contract. That is why I asked him if he assumed it the way I stated it, whether or not he used different numbers if he computed billings he would come out with different answers.

I think the question is objectionable on that ground.

Presiding Examiner: I thought in earlier cross-examination this witness said that he wasn't sure in some instances whether it would be a rate increase or a rate decrease under the 1954 contract as compared with the 1945 contract.

800

Mr. Bury: I recall that testimony.

Presiding Examiner: The objection is overruled.

The Witness: If the rates set forth in the 1945 contract were applied to the kilowatt hours and the kilowatts, if determinable, from 1954 to 1958, the amount of the bill would be greater under these rates as supplied than they would under the other rate.

Mr. Goldberg: I am not sure which is which now. The rates in Exhibit 5 would produce lower billings, is that what you just said?

The Witness: Yes, if the Exhibit 5 rates were applied to the kilowatt hours and the kilowatts and the other billing elements, by the way, which I should mention, which would be considered such as power factor.

Mr. Goldberg: Yes. Thank you.

By Mr. Everett:

Q. Can you give us an approximation of the amount that is involved? A. That is what I was answering in the other questions that I don't know and simply indicating that in the record here is Mr. Sack's estimate of that which I cannot understand and I have not prepared a comparable or similar computation and estimates.

Q. Would it be possible for you to prepare a computation similar to that set forth in the City of Colton's Exhibit

No.—— is it No. 6? A. Well, similar to Exhibit 6. You mean by that what, sir?

Q. Well, showing the difference between what in fact was collected by Edison Company over the years 1954 through 1958 and what would have been collected had there been no rate increases during that period. A. It would involve making certain assumptions. Whether those assumptions, how generally acceptable any assumption I might make would be as compared to the acceptability of Mr. Sack's, I don't know. But that is the first step one would have to make. Then one would take the figures in front of them and apply the rates and their blocks and then, of course, it would become purely a mechanical computation. But the important part of any such preparations are the assumptions which are made with respect to the determination of billing demand.

Q. Could you make reasonable assumptions which would enable you to come up with a reasonable accurate result? A. The accuracy of the result would be no better

(801)

than the assumptions which were made. The assumptions which I make, I believe, would appear to me to be reasonable but they might not, for example, appear to Mr. Sack to be reasonable, any more than Mr. Sack's apparent assumptions, which I don't quite yet understand, I didn't quite agree with, I mean I am

802

simply pointing out there is an area of estimate which is required here.

Q. Could you submit, Mr. Ashley, taking into consideration these assumptions which you say you would have to make, could you submit such a computation?

Mr. Bury: Would the reporter read the question, please?

Presiding Examiner: He asked him if he could submit such a computation.

Mr. Bury: Well, the "such computation" I didn't follow—the such relating back to the prior question?

Mr. Everett: Yes.

Presiding Examiner: I think it has been indicated to staff counsel that if one was submitted it might not be to his liking because he says that his assumptions and the City of Colton's assumptions might be completely different, and it would be based on those assumptions.

Mr. Everett: Has that last question been answered?

Presiding Examiner: No, it has not.

Mr. Bury: I think he asked the witness if he would, or did you ask him if he could?

Mr. Everett: I believe I asked him if he could make such a—and if so, would he submit it.

Mr. Bury: Well, that is two different questions. I wouldn't object to the question, could he, but I would object to the question, would he. I don't think it is incumbent

803

upon this witness to go back and prepare another exhibit. If the staff and the City of Colton want to draw all these assumptions that are necessary to make such an estimate I believe they can make the computations as much as anybody else.

Mr. Goldberg: We are satisfied with the record. We are not asking for any more computations from anybody.

Mr. Everett: Mr. Examiner, the staff doesn't want to belabor this point. As we stated at the very outset of this hearing we did take a position with regard to the jurisdictional character of the wholesale electric service rendered by Edison to the City of Colton but we were not taking a position, at least during the course of the hearing on certain other aspects of this case such as the provision in the City of Colton's petition with respect to refund of excess charges. That may not be the exact language in that petition, but it was words to that effect. The purpose of these questions that I am now addressing to Mr. Ashley is simply to develop the record so that ultimately when the staff has to make recommendations to you, sir, about this provision in the City of Colton's petition, that the record will be as complete as possible in regard to the actual dollar amounts involved. That is the only purpose of these questions, to see if the company has made the computations and if not could they make them and would they submit them. That is all.

804

Presiding Examiner: Is it your theory that this Examiner might order refunds if he found that they were collecting more than they perhaps should have collected?

Mr. Everett: No, sir. We are not, at least not at this time, getting into any discussion of what the company should be ordered to do. We are just trying to have the record develop sufficiently so that we will know just what the amounts are involved dollar-wise.

Presiding Examination: Well, that may or may not be the subject of future litigation.

Mr. Bury: Your Honor——

Mr. Goldberg: Mr. Examiner—excuse me.

Mr. Bury: Go ahead.

Mr. Goldberg: Let me make the City of Colton's position clear. If the Examiner in the first instance finds that the sales were subject to the jurisdiction of the Federal Power Commission, we would anticipate and we would believe that it is the function of the Examiner then to determine, based upon the record, the amount of the refunds to be made and to order that it be made. That is an issue in this proceeding.

Mr. Bury: We certainly do not agree with that.

I might make our position clear on some of these estimates. We heard, saw, Mr. Sack, saw the exhibit, we heard his testimony. We think that his testimony shows that his method of estimating

805

and his way of preparing that exhibit contains assumptions which are wrong as a matter of law, just for one, the inclucion of the pumping accounts which are clearly separate transactions, and for that purpose we came to the conclusion that the exhibit furnishes no useful figure whatsoever.

Now, I don't know that the burden is upon us, but we do know that in preparing such a study some of the assumptions that have to be made involve some legal problems.

Now, if you want us to go back and prepare some kind of a computation of whatever assumptions we want to make, including assumptions as to law, I am sure we could come up with a final figure which would represent some kind of a maximum difference between this and that which, for what it is worth, can go into the record, but there are so many variables involved. There are so many assumptions which are not necessarily engineering assumptions but assumptions as to law that that is one of the reasons we didn't try to do that job and we didn't feel it was incumbent upon us to do so.

Mr. Goldberg: Southern California Edison is perfectly at liberty to try this case as they see fit. I want the Examiner to understand that the issue of the amount to be refunded is in this case. We presented evidence on that. We believe valid evidence. We will argue it in the briefs.

Mr. Everett: Mr. Examiner, the staff doesn't mean to have anything it has said to be interpreted as criticism of the

806

way the company has conducted its case. We just want to point out that this is the first witness whose direct testimony has given us even a small opportunity to get into this accounting question or, if you want to call it, excess charges questions or refund questions. Certainly; it wouldn't have been appropriate to have asked Dr. Sorensen about that or Mr. Sample or even Mr. Montgomery. But Mr. Ashley did during his direct testimony sponsor an exhibit, Exhibit No. 23, which went into at least in a general way this matter of revenue that Edison has received from sales to the City of Colton. So we were simply trying in these questions to develop further the information with respect to those revenues. Nothing we have said is intended to mean any criticism of the company. The staff just feels it has an obligation to have the record as complete as possible with respect to this accounting matter and we are just trying to have the

(806)

benefit of Mr. Ashley's information on this subject since he seems to be the company's witness who would be most likely to be helpful on this point. He is, after all, manager of the rate department.

Presiding Examiner: The pending question is, could he prepare an estimate of the difference, if any there be, between the rates provided for in the 1945 contract as compared with the 1954 through 1958 billings.

Is that the question?

807

Mr. Everett: Yes, sir.

Mr. Bury: The Examiner stated the question to you.

The Witness: Yes, by making certain assumptions and applying the rates such amount could be prepared.

Mr. Bury: I might make this statement at this stage, we, of course, did not propose to make such a study. We didn't feel it was incumbent upon us to do so. We really don't think it is pertinent in this case. But if the Examiner feels such information would be helpful to him, we would be only too happy. We would go back to Los Angeles and prepare an estimate on such assumptions we believe to be reasonable and we would submit them. But I just want to point out some of those assumptions would have to be legal determinations. We would have to find out whether the 1945 contract would have been terminated at the end of its initial term in 1955. I certainly would ask the witness to make that as one of the assumptions on which such a study was made and there are a great many others but if the Examiner thinks that information would be helpful we shall do so.

Presiding Examiner: You would undoubtedly want to examine him, give him an opportunity to explain such a study, too, wouldn't you?

Mr. Bury: I don't know what is involved. I haven't gone through this. It is certainly possible that if such a study were prepared we might think it would be self-explanatory and

808

could be simply mailed in.

Mr. Goldberg: I don't think we could agree to that.

Mr. Bury: No, I don't think so, either.

Mrs. Pajalich: Mr. Examiner, may I comment that apparently both staff counsel and counsel for the City of Colton hope to further enlarge the jurisdiction of this Commission by having an order for refunds or reparations emanating from this Commission, should it determine that such an order is appropriate. I see nothing in the Federal Power Act which gives this Commission any jurisdiction to make an order directing refunds or reparations to be made, nor is it prayed for in the petition filed by the City of Colton.

In the third subdivision of the prayer, the City prays that an order issue requiring Southern California Edison to determine and account for the difference between the amounts actually charged and paid by petitioner and those which should have been properly charged and paid in accordance with the terms of the contract.

Now, that doesn't anticipate, it seems to me, that something has to be introduced in this proceeding at this juncture before this Commission in the nature of an accounting.

Mr. Bury: It seems to me that that prayer is if Colton gets everything it asks for, then we will be ordered to prepare such a study you have asked of the witness.

809

Mr. Goldberg: On this point of the authority of the Commission I think that is put to rest by the California

(809)

Electric Power Company case where the Commission did order refunds and refunds were made.

Mrs. Pajalich: It ordered a contingent reserve account to be set up.

Mr. Bury: The parties by stipulation agreed as to the distribution of certain monies.

Mr. Goldberg: As to how it was to get it back.

Mr. Everett: Mr. Examiner, the staff doesn't want to prolong this matter any further. We simply do want to have the records show, though, that it is not our intention to say anything this morning or any time previously in this hearing that the staff was asking the Examiner to issue an order directing the Edison Company to make any refunds.

I thought both in our opening statement back in December and in our remarks this morning we indicated we hadn't taken any position on that aspect of the City of Colton's petition.

Presiding Examiner: That is as I understood it and counsel for the City of Colton says he is satisfied with the record as it stands today.

Mr. Everett: We are not going to ask anyone to submit any more information, Mr. Examiner. As I said before, we simply have on the stand now the company's witness who appeared

810

to the staff to be the officer best qualified to answer the staff's questions with respect, if he will, to the accounting aspects of this case and so for that reason we asked him these questions which we have and we are not asking anyone to submit any more data and we definitely want it understood that we have not either today or last week or last December taken any position on this refund question.

Presiding Examiner: Wall, the way the record stands now, is it—is the City of Colton by their Exhibit 6 claim that they were overcharged so much, based upon their theory or interpretation of the contract?

Edison says they don't owe them anything. They have collected only in accordance with the contract. That is the position of the record at this moment.

Do you have further questions of this witness?

Mr. Everett: Just a moment, please, sir.

By Mr. Everett:

Q. Mr. Ashley, do you have before you Exhibit 40? A. Yes, I do.

Q. Do you have what is described in that exhibit as Picture No. 2, Highgrove substation 220 KV switch rack? A. Yes.

Q. Sir, could you point out to us, if you can, where the buses are located on this 220 KV switch rack? A. I believe it is difficult to put in words.

811

The buses are attached to the switches there as I see the picture.

Mr. Goldberg: Mr. Everett, perhaps Picture No. 2 is a better one for the question.

Is that the one you are looking at, No. 2?

Mr. Everett. Yes. That is the picture that I asked Mr. Ashley to look at, Mr. Goldberg.

By Mr. Everett:

Q. Could you tell us what the distance between the first and last switch is as shown on Picture No. 2, Mr. Ashley? A. No, I cannot.

Q. Well, could you estimate that distance, sir? A. Not from this photograph I could not.

(811)

Q. Did you take this picture No. 2, sir? A. Yes, I pressed the button.

812

Q. Well, at the time that you took it, based upon your visit to the Highgrove substation for the purpose of taking the picture, can you tell us what the distance between the first and last switch is? A. I made no endeavor to estimate any distance nor do I even recall identifying the positions. We had a rather large tour to take that day, as I think the picture series indicates, and merely walked here into the switch yard and took these pictures which we thought might be helpful to the Examiner in this proceeding and the other parties.

Q. Well, you must have some idea. Was it 100, 200, or 300 feet, this distance between the first and last switch? A. I have no idea and I think I answered it.

Mr. Everett: Mr. Examiner at this time the Staff offers in evidence Item Q and Item R.

Mr. Bury: Mr. Examiner, with respect to Item Q, we have no objection.

With respect to Item R, which is one letter out of a series of letters, our only indication is that we propose to offer the balance of the letters in that series. Mr. Everett referred to the Federal Power Commission file designated Southern California, the electric correspondence, part one, which presently contains six letters, chronologically the fourth of which is Item I. We would propose to have identified and offered all six letters. We can do this at this time and let them be ruled on

813

together, but absent the others, I would object to the receipt of the one letter which is Item R.

I believe the letter in and of itself is complete without the other letters because of the cross-references contained within it.

As a matter of fact, just to clear up the record, I would then formally offer, ask that there be identified an item by reference to the Commission files, six letters presently contained in the Southern California Edison Company electric correspondence file, part 1, which letters are respectively dated August 31, 1953, September 4, 1953, September 17, 1953. The next is the letter of November 2, 1953, previously identified as Item R, and a letter of February 17, 1954, and finally a letter dated March 24, 1954, addressed to Mr. Leon M. Fuquay, Secretary, Federal Power Commission, Mr. Bruce Renwick, General Counsel, on the letterhead of Southern Califonia Edison Company.

We ask that that be identified at this time.

May that group of letters be identified as an item?

Presiding Examiner: It will be marked Item S for identification.

(The document referred to was identified as Item S by reference.)

Mr. Bury: We wish to offer Item S.

Mr. Goldberg: I wasn't quick enough. I was going to say that this is not an appropriate time for Mr. Bury to be identify-

814

ing any additional evidence that he may want to put in in answer to Item R.

Presiding Examiner: I think what he was trying to do was to complete the picture that the Staff put in by their Item R.

Mr. Bury: I would agree that this might not be the appropriate time for us to come forward and offering (sic) testimony but it appeared appropriate in light of the offer on Item R.

Presiding Examiner: Has the Staff any objection to it?

(814)

Mr. Everett: No, sir.

Mr. Bury: I might indicate for the record that copies of all of the letters which are now identified as Item S have been furnished to all of the parties as Exhibit C to Edison's motion to dismiss.

Those have been available to the parties and in addition I happen to have two sets of those letters, that is, not in Exhibit form but independently, which I will offer to the reporter as copies of Item S.

Presiding Examiner: Well, the motion to dismiss is presently before the Examiner to be ruled on.

Mr. Bury: Well, I was just thinking of for purposes of, for instance, having a record.

Now, certainly the motion to dismiss is not part of the record. It was part of the files. It is not part of the record.

Presiding Examiner: That is right.

815

Mr. Bury: However, the parties have had copies of the letters we are now offering as Item S. I have given two to the reporter for the record and I can furnish additional copies to the parties later if they wish them.

Presiding Examiner: Items Q, R and S will be admitted at this time.

(The documents referred to, heretofore marked for identification as Items Q, R and S by reference, were received in evidence.)

Presiding Examiner: Now, does that complete your cross-examination?

Mr. Everett: Yes, sir, it does.

Off the record, Mr. Examiner.

(Discussion off the record.)

Presiding Examiner: Back on the record.

Mr. Goldberg.

## Cross-Examination

### By Mr. Goldberg:

Q. Is this the case, Mr. Ashley, that when you testified at transcript 321 and 322 that the 1937 contract was followed in 1941 by a contract which continued the same rate in effect but provided a reduction in billing by the adoption of a power factor discount, you actually do not know whether the adoption of that power factor resulted in a reduction in billing to Colton, isn't that right?

A. I am of the belief that it did result in a reduction in billing. However, as to the amount of such reduction which was the question directed to me, I do not know.

Q. Are you saying that you are certain that you actually know that it produced a reduction in billing or only that it could have? A. I feel quite confident that it did produce some reduction in billing, with one reservation, and that is that perhaps Colton shortly thereafter may have increased its power factor so it would receive a reduction. Otherwise, they would not have been interested in the power factor provision.

Q. But in connection with your testimony which I have just referred to, I understand that you made no review then at that time to determine whether in fact it resulted in a reduction in billing? A. No specific review, but I am of the general opinion that all circumstances considered that it did result in some reduction.

Q. Now, then, with respect to the 1945 contract which you testified at transcript 322 effected a reduction of rates to the City of Colton, do you know that as a fact it effected a reduction in rates? A. As a fact, it did effect a reduction in rates.

Q. But you do not know in what amount, is that right? A. Yes, I know in what amount. I indicated on the second

817

page of the exhibit.

Q. Oh, your exhibit? A. No, not mine. Exhibit 20. The second page of Exhibit 20 which is the California Commission decision indicates the reduction in rate which was afforded between the '41 and '45 contract.

Q. That was a postulated reduction in the decision, was it not? A. In my experience of rate reductions, I never before encountered a postulated rate.

Q. I have this in mind: this is what you thought. Your case was presented, I suppose, to the California Commission on the basis that the rates in the 1945 contract would produce a certain estimated reduction, is that right? A. Reduction of what? There is no estimate as to the reduction in rate involved here. The rates are shown right on the face here.

Q. Oh, you are talking about the schedule of rates, aren't you? A. No, sir. I am talking about rates. I am not talking about revenues.

Q. You are referring to Exhibit 20? A. Yes.

Q. What page are you looking at? A. Second page.

818

Q. All right. I think we can get on the same wave length now. On page 2 of that exhibit, we have a schedule of rates comparing the 1941 and 1945 contract. Is that right? A. No. I wouldn't call it schedule of rates. I would say it was a summary of the rate which would be included in a schedule of rates.

Q. Summary of rates to be included in a schedule of rates that you would file at some later date? A. Well, evidently it has already been filed because this is the Commission decision.

Q. I see before me a heading called "Demand Charge," and a heading called "Energy Charge," with various blocks under each, right? A. Right.

Q. And the charge for each block? A. Correct.

Q. Now, then, when you testified as you did at transcript 322 it was based upon a comparison of the rates set forth on page 2 of Exhibit 20? A. What was the reference here—when I testified on what?

Q. 322, where you said that the 1945 contract effected a reduction in rates. A. Yes, I refer to the relation of the figures shown on

this page 2.

Q. And that is all you were referring when you so testified, right? A. Yes.

Q. But did you in fact determine that the 1945 rates produced a reduction over what would have been the charge under the 1941 contract? A. Not as to any specific revenue. However, to the extent that any billing demands for the City of Colton in excess of 3,000 kilowatts would have received for the kilowatts in excess thereof a reduction.

Q. Yes, I understand what you are saying.

Will you give me the kilowatt hour sales to Anaheim, Azusa and Riverside for the year 1958 as shown in Form 12 of your company?

Mr. Bury: May I have your question re-read, please?

Presiding Examiner: Yes. Please read it, Miss Reporter.

(The question, as recorded, was read by the reporter.)

Mr. Bury: I will have to object to the question as being immaterial—what kilowatt hour sales are to these other customers.

Mr. Goldberg: Oh, I think we will be able to show the materiality.

The Witness: You said Form 12, did you not?

820

By Mr. Goldberg:

Q. Yes, that is what my notes show. Am I mistaken in the form?

If you can get it out of any other form you have before you, I would be content.

Mr. Bury: Kilowatt hour sales?

The Witness: Yes.

By Mr. Goldberg:

Q. If you are having difficulty, I can speed this up by giving you the figures I have and they can be subject to check and you can check them over the noon hour recess.

I have for Anaheim 147 million 696 thousand kilowatt hours.

For Azusa, 41 million 352 thousand kilowatt hours.

For Riverside 194 million 354 thousand kilowatt hours.

You can just take those subject to check and report after the noon recess if you like. A. I have in front of me these figures and the form I have is in agreement with reference to Anaheim and Azusa, kilowatt hour sales, but not with respect to the City of Riverside.

Q. What do you have for Riverside there? A. 192 million 635 thousand 900. That appears on page 67 of Edison's Form 1.

Q. For my purposes, your figure will be acceptable.

821

Mr. Bury: That is for the year 1958?

Mr. Goldberg: '58.

By Mr. Goldberg:

Q. I have just asked your counsel to place Form 12 before you for the year 1958. Would you turn to page 31-A. A. I didn't get the page.

Q. 31-A. A. That is in Schedule 18-B?

Q. That is right.

Running your eye down those descriptions, do you notice a line "Arroyo to Jet"? A. Yes.

Q. What is the length of that line, according to the report? A. Is one-tenth of a mile, .1 miles, yes, sir.

Q. And it is 66 KV section of line, is it? A. Yes.

Q. And does not the report show that the monthly system peak that occurred for October 1958 was 4 megawatts on that line? A. It indicates that the estimated line load at the time of monthly system peak was 4 megawatts.

Q. Yes.

Now, will you turn to page 31-C, and I want to direct your

attention to the section of line described as South Colton to Colton Cement. Do you find that? A. Yes.

Q. And the length of that section is 1.9 miles according to that report? A. Yes.

Q. And it is a 66 KV line? A. Yes.

Q. And the line load at the time of the peak which was in April, monthly system peak, was 1.3 megawatts? A. The estimated line load at time of monthly system peak was 1.3 megawatts.

Q. And is that Colton Cement a retail customer of Edison?

By that I mean did you serve them directly?

Mr. Bury: Excuse me. I don't get the shift from the transmission line to the customers.

Mr. Goldberg: This is a line that is described Colton to Colton Cement.

Mr. Bury: That is the name of the line?

Mr. Goldberg: Yes.

(822)

By Mr. Goldberg:

Q. Now, my question should perhaps have been: Edison has a direct customer called Colton Cement, is that right? A. It is my recollection that they have their own

823

plant there, if I am recollecting properly.

Q. Your recollection is that Edison does not supply Colton Cement with any power? A. Oh, perhaps a small amount.

Q. Will you check it out over the noon recess? A. But Colton Cement here in this simply is referring to another location. For example, we don't have a customer called Walnut or Livey or any of those kinds of things.

Q. I realize that. A. So you are asking about an enterprise in that vicinity called Colton Cement and is it a customer of Edison?

Q. Yes, and I would also like to know whether it is served off that section of line? A. I think over the noon recess we might be able to find that out.

Q. All right.

Now, will you turn to page 31(c) of that Form 12 which is before you.

Do you find a section of line described as Highgrove to Wheel? A. Yes.

Q. And is that nine-tenths of a mile in length? A. Yes.

Q. And it is a 66 KV line? A. Yes.

824

Q. And the estimated line load at the time of the monthly peak in December was 7.5 megawatts? A. Yes, 7.5.

Q. Does Edison have any customer that is served off that line by Edison? A. Yes.

Q. Griffin, is it? A. Griffin Wheel in the City of Colton.

Q. Yes. That is a direct customer of Edison's—your own customer? A. Yes.

Q. When did the City of Colton begin to use energy purchased from Edison for pumping purposes? A. From the information I have, I believe the earliest recollection, knowledge we have, is in 1905.

Q. And is that the time when deliveries to the various well sites began? A. I can't say as to beginning. I am referring to a point in time. There was a great amount of research done on this matter of the resale city contracts by the firm representing those customers before the California Commission and at that time we were able to find this 1905 contract with one of our predecessors and it indicated that that was service for pumping as well as use by the city.

Q. I think your testimony indicates that Edison began

separate billing for energy consumed in operating the pumps at September 13, 1954, is that right? A. Yes. Effective with the decision in our first rate case.

Q. Prior to that date a single bill was presented to Colton for all electric energy sold to it, is that right? A. I believe a single bill was then presented.

Q. And there was a single rate? A. No, there were many rates.

Q. Well, when I say there was a single rate, referring to the 1945 contract, there was a single rate in that contract for all energy sold to Colton? A. There were——

Q. That is Exhibit 5 if you care to check it. A. That is the schedule of rates to which we have referred which included demand charges and energy charges, each of which has a rate. I mean each block has a rate in that sense.

Q. Yes, but all of these blocks are part of the same rate schedule, aren't they? There is one rate schedule in that Exhibit 5 applicable to all? A. Not designated as such, but it does have the elements of a rate schedule in that it includes the rates, it includes the conditions, it includes the power factor and such items.

Q. And it was applicable to all kilowatt hours sold to

Colton under that contract, right? A. Well, I can't answer as to all sold to Colton. It was applicable to the municipal pumping accounts which have been defined as well as the resale.

Q. You are familiar with Exhibit 5, are you not?

I direct your attention to pages 1 and 2 particularly. Does it not appear that all purchases made under the contract are to be billed in accordance with the following rate schedule which appears on page 2 and carries over to page 3, isn't that right? A. Yes, that is what it says.

Q. So obviously there was a single rate schedule for all energy sold to Colton, wasn't there? A. Yes.

Q. Now, during the time that a single bill was submitted to Colton, was there separate metering of energy at the pumping stations, pump sites? A. Yes.

Q. On this inspection trip that you made for the purpose of taking pictures on December 22nd, were you alone? A. No.

Q. Who was with you? A. Mr. Bury, Mr. Sample and Mr. Patterson.

Q. And I think you said that this inspection consumed one full day? A. Yes.

Q. Portal to portal? A. Yes, in a sense.

Mr. Goldberg: May I suggest——

Presiding Examiner: Mr. Goldberg, we will take the noon recess.

(Whereupon, at 12:33 o'clock p.m., the hearing was recessed, to reconvene at 2:00 p.m., on the same day.)

Afternoon Session 2 p.m.

Presiding Examiner: Are you ready, Mr. Goldberg?

Mr. Goldberg: Yes, Mr. Examiner.

Whereupon,

C. L. ASHLEY

resumed the stand, and testified further as follows:

Cross-Examination—Resumed

By Mr. Goldberg:

Q. Did you have any success in determining whether you have a customer named Colton Cement off that southern Colton to Colton cement line that we spoke of this morning? A. Yes. The customer served from that substation at Colton Cement is the California Portland Cement Company.

Q. California Portland Cement? A. Portland Cement. And in my answers this morning I indicated a confusion as to some other customer not served by the company, and that is the Riverside Cement Plant, in this same general area.

Q. I see. And this customer, California Portland Cement that is served off that 1.9 mile section of 66 KV line, is the service to him 66 KV? A. No. It is stepped down through transformation at a substation at that location.

Q. What is the low side? A. Voltage? There are several categories of these

substations in Form 12, and I am having a little difficulty.

Mr. Bury: I have something that might refresh his recollection.

(829)

Mr. Goldberg: Mr. Bury thinks he has something that could help supply the response, and I have no objection to his showing it to the witness.

The Witness: Yes, that delivery is at 12 KV.

By Mr. Goldberg:

Q. Thank you. You have referred to the fact that within the city limits of the City of Colton your company has a number of customers who are served by means of taps off the 12 KV line. Am I right so far? A. Yes. They are served by the 12 KV line.

Q. This 12 KV line—is that part of the Derby and Globe Mills circuits? Are these different 12 KV lines? A. In response to Mr. Everett, I counted here, and there are seven different KV circuits.

Q. I see. These 12 KV circuits traverse the City of Colton, is that right? Or at least some of them do. A. Some of them do.

Q. Well, speaking of those that are within the city limits of Colton, would I be correct that even if Edison did not have any of these customers within the city limits of Colton the company would nevertheless have those 12 KV

830

circuits within the city limits because it would be the most convenient means of getting to customers that you have west and south of the city. A. Well, that would be true of some lines that in effect transverse the city. Of course there are other parts at least of those lines which are used to serve customers individually.

Q. Yes. But the point I was making is if you had no customers within the city limits you would nevertheless have 12 KV lines traversing the city, as you have today, because it would be the most convenient means of getting to customers west and south of the city of Colton. A.

Not such a broad statement. I mean there would be some lines, or some parts of these lines, which we would not have if we were not serving customers in the City of Colton.

Q. I see. But with that exception, my statement is correct? A. I believe in part there would continue to be the same circuits.

Q. Now, with respect to the customers within the city limits that are served off the 12 KV lines that we are discussing, I correctly understand, do I, that service to them, particularly the domestic customers, let me say, involves stepdown of energy, of the voltage of the energy? A. Yes.

Q. Now, with respect to each of these customers that are

831

served off the 12 KV lines, are there also lines from the 12 KV line to the customers premises? A. Yes. Those may be in the nature of either a secondary run from the transformer, and in all cases there would be a service drop, or service connection to the customer's point of connection.

Q. Yes. And in the case of the domestic customers, that service connection would drop down to what voltage? A. Well, the service connection would be at whatever voltage was available at the secondary. In other words, there would be no further dropping down by the service connection, appreciably, that is.

Q. I see. And what is the voltage that is normally available within the City of Colton at the secondary? A. Well, any standard distribution voltage is available within the City of Colton.

Q. I see. Looking at Picture No. 2, which is part of Exhibit No. 40, who are the individuals in that picture, do you recall? Down there near—about the middle of

(831)

the picture. A. No. I don't recall. I mentioned earlier who—the four of us who went on the trip. And, as I recollect, in the switchyard at Highgrove Substation, the station chief was along.

Q. On Picture 3, which indicates the transformer

832

Banks 1-A and 2-A, is 1-A on the left and 2-A on the right, looking at the picture? A. I do not recall.

Q. Picture No. 12 refers to Pacific Fruit Express. Looking at that picture, and to the lines that are running into the pole in the foreground, that is the 12 KV line, is it? A. That is the 12 KV line that goes from the tall pole at the left of the picture down to the switch structure.

Q. And the lines coming into that pole are also 12 KV? A. Yes. That is a 12-KV circuit, in the upper-right-hand corner—upper left-hand corner, I beg your pardon.

Q. And all of those lines are Edison's lines? A. Well, now, I am—I see lots of lines.

Q. Well, the 12 KV we were referring to. A. Yes, the 12 KV line we were referring to.

Q. And is the substation the Edison substation, also, or is that the customer's substation? A. That is the Edison substation.

Q. Looking at Picture No. 13, the lines connected to the arms of that pole, they are 12 KV? A. The upper lines, yes.

Q. And there is a service take-off to the billboard, is that right?

833

A. Yes. There are several customers in that vicinity.

Q. And you have already, I think, testified to the voltages involved in that service, have you not? A. Yes.

Q. Now, looking at Picture No. 14. That is a 12 KV line on that pole, is that right? A. No, that is the secondary drop coming down, and is shown as a part of Picture 13—coming down to this service pole.

Q. I see. Do you know the voltage involved there, on that secondary drop? A. Yes, all of the secondary from that point is at 120, 240 volts.

Q. I see. So these lines that we see coming into that pole, come off the 12 KV circuit? A. The lines you see coming down in that pole. Pictures 13 and 14 follow right together. On the pole in Picture 13 is a transformer. The secondary of that transformer serves a number of customers in that vicinity. And one of these customers is served by means of one of those lines dropping down to a service pole which is shown in Picture 14.

Q. Now, these 12 KV lines that we have been talking about, in addition to carrying electric energy, which is used to serve these customers, carries energy through the town to other localities beyond the City of Colton?

A. Well, the ones we have been looking at—are you confining your question now——

Q. To the 12 KV. A. Yes. But a particular 12 KV circuit?

Q. Well, how about the one that was involved in serving Pacific Fruit Express? Let's take both Nos. 12 and 13. Let's talk about both of those lines, if you will, please. A. Both of those lines that we are discussing here are the Derby and——

Q. Globe Mills? A. Globe Mills circuits—which, is turn, appear, from the information I have, being at least connected to other 12 KV circuits.

Q. That run beyond the City of Colton? A. Yes.

Q. In Picture No. 18, will you indicate the transformer rack? A. The transformer rack is in the far distance. It is on the third pole down. There are three poles showing in the picture, and it is on the furthest pole.

Q. I see. And is that a 12 KV line we are looking at? A. Yes.

Q. From the viewpoint of installed capacity, Southern California Edison—would you say it is the second rank or first rank company in the State of California?

835

A. By capacity you mean generation production?

Q. Yes. A. Yes, it is second.

Q. And in the country, is it not fourth? A. I have not recently seen such ratings. They are prepared from time to time.

Q. What was the most recent rating you recall seeing? A. Oh, about two years ago.

Q. What was it at that time? A. The company's size was measured by many factors. As I recollect, there must have been 20 different factors that were used to measure size, such as number of customers and kilowatts and revenues and all of those things. I think at that time the over-all you might say consensus of such ratings, it was about eighth, all in all.

Mr. Goldberg: Those are all the questions we have, thank you.

Presiding Examiner: Has the California Commission any questions?

Mrs. Pajalich: No questions, Mr. Examiner.

Mr. Bury: I have a few.

### Redirect Examination
### By Mr. Bury:

Q. In response to a question by Mr. Everett, I think with respect to Exhibit 21, which is Decision No. 50449 of

836

the California Public Utilities Commission, he asked you if that decision and order resulted from an application of Edison asking for such an order. I believe the answer was generally in the affirmative. Did you intend to imply by that answer that Edison got what it applied for in that order? A. No, not in many respects it did not.

Q. With respect to rates for the City of Colton? A. No. Edison had asked in that instance, in its application, for higher rates, among other things.

Q. With respect to service by Edison within the city limits of the City of Colton, who is Edison's largest customer within the City of Colton? A. Griffin Wheel Company.

Q. Who is the second largest customer in the City of Colton? A. The City of Colton, Resale.

Q. Mr. Goldberg asked a few questions concerning several 12 KV lines which distribute energy within the City of Colton, and in the general vicinity. I believe you mentioned they were seven in number. Do each of those circuits to which you refer emanate from the Edison's Colton distribution substation? A. I am endeavoring to find our map of that area, in order to confirm the answer.

837

Q. Perhaps I made the question a little too general. Making reference to the questions by Mr. Goldberg, they were, I believe, with respect to the facilities shown on the photographs. I think it was indicated they represented several different 12 KV circuits. I simply wanted to know if these of those circuits emanated from Edison's Colton Distribution Substation. A. Well, the Globe Mills and Derby circuits do, as do the Domic, Tooley and Cactus. However, there are some 12 KV circuits within the City

(837)

of Colton that appear to emanate from the Cardiff substation.

Q. With respect to certain pictures, will you turn first to Picture 12. I think you indicated service to Pacific Fruit Express. The 12 KV facilities shown on that picture, or part of them, are located on the customers' premises, are they not? A. Yes.

Q. And with respect to Pictures 16, 17 and 18, is it also true that the 12 KV facilities shown thereon come to the customers' premises? A. I didn't hear the last part.

Q. That the 12 KV facilities shown on those pictures come to the customers' premises. A. Yes.

Q. And with respect to Pictures 19 and 20, the 12 KV

838

facilities shown there, are located along the street—across the street from the customers' premises? A. The 12 KV facilities are, yes.

Q. Are the facilities—the 12 KV facilities shown on pictures to which I just referred—that is, 12, 16, 17, 18, 19 and 20, used for any other purpose than the distribution of energy to Edison's customers? A. No.

Mr. Bury: That is all I have.

Mr. Goldberg: Just let me ask one question, if I may, on that.

### Recross-Examination

By Mr. Goldberg:

Q. When you answered that they were not used for any other purpose other than distribution to Edison's customers, you didn't mean distribution solely to customers within the limits of the City of Colton, did you? A. I don't know that I understand the question.

Q. Well, let me rephrase it. I was afraid that you were creating the impression, perhaps inadvertently—I am sure inadvertently—in responsing (sic) to your counsel's question, that the 12 KV facilities to which he referred were used to serve Edison's customers solely within the limits of the City of Colton. Now, that is not so, is it? A. Well, if I understand the question, that these are

839

the only facilities that are required to serve the customers?

Q. No. These 12 KV facilities to which you have referred—— A. Shown in these pictures.

Q. Yes. They are used to serve customers outside the City of Colton, are they not? A. These particular ones?

Q. Yes. A. Oh, no. These are customers within the City of Colton.

Q. The 12 KV facilities—are these 12 KV facilities referred to by counsel limited to service within the City of Colton? A. Well, I find it difficult to answer the question now—if we are confining ourselves to what we see in the photograph, we see nothing in that photograph except some premises which are in the City of Colton, and a portion of some 12 KV facilities.

Q. Yes. At that point perhaps those 12 KV facilities are serving the function of providing energy through customers services to the customers shown in the picture. But the point I am making is those 12 KV facilities have another function, and that is to transmit energy and serve other customers outside the City of Colton. Isn't that so? A. Well, certainly not the case of the customers shown

840

in Pictures 16, 17 and 18, because those customers are on what is a branch line going from a circuit to serve these particular industrial customers.

Q. Let me get that straight, then. This is a 12 KV branch line that stays within the City of Colton, and serves these customers within the City of Colton, is that right? A. Yes.

Q. These are not the Globe Mills and Derby circuits, are they? A, No, they are not.

Q. All right. When you mentioned that the City of Colton was the second largest customer within the city, and Griffin Wheel was the first, you were there speaking about two categories of customers—a direct and a resale customer, right? A. Yes. I would refer to Griffin Wheel as an industrial customer, and the other as a resale customer.

Q. And how about Colton Cement? Is that served within the city limits of Colton? A. No.

Q. Is it larger than Griffin Wheel or smaller than Griffin Wheel, as a customer? A. It is a larger customer.

Mr. Goldberg: Thank you very much.

Mr. Everett: No questions.

841

Presiding Examiner: Thank you.

You are excused.

(Witness excused.)

Mr. Cragun: Mr. Examiner, I would like to make one request addressed to the Examiner's discretion. I understand that with respect to Mr. Patterson, Staff has a good many questions. I think we could possibly get through with and excuse one man here who would very much like to catch a plane this afternoon, if the Examiner will permit it. Mr. Sack has only a few questions to answer when he is recalled. It is out of order, I know.

Presiding Examiner: Is this rebuttal testimony?

Mr. Cragun: Yes, Your Honor. It is rebuttal.

Presiding Examiner: I have no objection to your putting it on ahead of Mr. Patterson, if it will accommodate parties.

Mr. Cragun: Mr. Sack, will you take the stand.

Whereupon,

FREDERICK SACK

was recalled as a witness, and having been previously duly sworn, was examined and testified as follows:

Mr. Cragun: We have one exhibit to be identified.

Mrs. Pajalich: Mr. Examiner, during this little hiatus, I would like to make a motion to strike the questions posed by Mr. Goldberg relative to sales to the cities of Anaheim,

842

Azusa, and Riverside, and the answers thereto, in view of the fact that they are wholly immaterial to any of the issues in this proceeding, and have not been connected up with any issues in this proceeding.

Mr. Goldberg: May I request that you defer that until we get Mr. Patterson on the stand?

Presiding Examiner: Well, I will defer it until then. But I don't know how it relates to this issue.

Mr. Goldberg: That is why I asked that it be deferred. And I did not care to disclose it until I had Mr. Patterson on the stand.

Presiding Examiner: Mr. Cragun, the paper you handed me will be marked Exhibit 41 for identification.

(The document referred to was marked for identification as Exhibit No. 41.)

Direct Examination—Rebuttal

By Mr. Cragun:

Q. Mr. Sack, do you have Exhibit 41 before you? Can you tell me who prepared Exhibit 41? A. I did.

843

Q. What did you undertake to show by this exhibit? A. Well, my objective was to depict in a little more realistic manner than does Exhibit 29 Southern California

(843)
Edison's total kilowatts for 1958 with respect to the service to the City of Colton.

Q. You say more realistic. To what extent is Exhibit 29 unrealistic? A. Well, to me Exhibit 29 shows a large pool of power with input on one side and also going out on the other side, and it leaves the impression and assumes that all of this input is actually regularly available to and does serve the Colton load. I don't think this is the fact. Occasionally some power, probably from the western side, may get into the San Bernardino Redlands area. But Exhibit 29 does not give effect to the fact that the sources of this western area are 40, 50 and 60 miles away, with thousands, as a matter of fact several hundred thousand customers in between, and some of them are pretty good-sized customers. And these loads are between these sources and the City of Colton.

Exhibit 29, you might say, pictures the entire energy of Southern California flowing past Colton like a river. And I don't think that that is exactly the correct impression.

Q. What does your exhibit show in this regard? A. Well, my exhibit shows that in 1958 the net power was exported west out of this San Bernardino Redlands District,

844

and the great bulk of the power that is referred to on the California Commission's Exhibit 29 has nothing to do with the power that is available to the City of Colton. The great bulk on Exhibit 29 is actually produced and consumed to the west. And the San Bernardino Redlands Districts have in net result contributed about 2 billion of the approximately 3 billion kilowatt hours which come into these eastern districts—has contributed this to the western section. And it shows the generation coming in from

Hoover, Etiwanda, and the rest of the area, into these eastern districts.

Q. Where did you get the values which you have depicted on this exhibit? A. Well, the figures from Hoover-Chino and the Metropolitan Water District, and the figures of Highgrove, Colton sub, and the City of Colton substation are from Exhibit 29. They are indicated there with an asterisk. The energy figures which are not indicated with an asterisk are from Form 12, Schedule 1 of Southern California Edison's report for 1958, including Etiwanda, the smaller hydro plants, the Fontana plant, all east of the dotted line, showing the limits of the San Bernardino Redlands Districts. And also, from this Form 12, for all the sources to the west of that line produced in the western section, you might say.

Q. Are these sources of information sufficiently accurate to permit depicting what happened over the course of 1958,

on this system? A. Well, there may be some discrepancies there which I possibly could have avoided had I had time and access to all the required data. But I don't believe that any of the discrepancies are of sufficient magnitude to have any meaningful effect on the overall portion, or overall flow away from the San Bernardino Redlands area.

Q. What is the significance of showing separately the San Bernardino Redlands Districts as distinguished from the balance of Southern California Edison's Districts? A. Well, while their 220 kv and their 66 kv systems are all tied together, these districts are operated in their distribution facilities more or less independently, and I could find no ties between the districts on the maps. I felt it was proper to go along with this premise that I had run

(845)

into before, that they were operated separately. And my understanding was further confirmed with Mr. Patterson's testimony that most of this power flowed through the Highgrove substation.

Q. What is the significance of the arrows on the diagram? A. Well, they are to represent the overall year's time net effect, the direction of the flow of power, and show the inputs and to be sure to have the input there, we must have the consumers to use this load, or you would have no load.

Q. What is shown by the portion of the diagram to the

846

right, or east of the line you designate setting out the limits of the San Bernardino Redlands Districts? A. When these kilowatt hours are totalled, we find that there is a total incoming into these districts of 2,099,623,771 kilowatt hours. This portion of the system included the City of Colton. Also from Southern California Edison's FPC report Form 12 for 1958 we find that the Southern Bernardino Redlands District consumed of this total input 928,353,725 kilowatt hours, of which the largest portion, I believe, went through Highgrove substation. And that total is shown down in the lower righthand corner. Subtracting this consumption of the two districts east of the line from the total input into this eastern area, we have a total of 2,071,270,000 kilowatt hours that was actually—that actually went to the western section, to assist in supplying the loads in that area, in the western territory.

Q. What does the arrow crossing from the San Bernardino Redlands Districts to the western districts indicate? A. It shows this total of 2,071,270,000 kilowatt hours, or this difference, I should say, between the input and that used in the eastern area.

Q. What was the total power available to the San Bernardino Redlands Districts? A. Well, we had—you mean in 1958?

847

Q. Yes, I am speaking with respect to this exhibit, which you have testified is 1958. A. Well, from Metropolitan Water and Hayfield, coming into Highgrove, we had 177,724,300, and Hoover-Chino we had 941,990,700 kilowatt hours, giving us a total of 1,119,715,000. The four small plants, we had a total of 75,504,771 kilowatts. And the Etiwanda steam plant with 1,804,404,000 kilowatt hours. Or a total of 2,999,623,771 kilowatt hours.

Q. What portion—proportion of the power available in those districts of San Bernardino and Redlands was in excess of the loads served within those districts? A. More than two-thirds—actually, about 69 per cent.

Q. Of the net power that you have shown available to the San Bernardino Redlands Districts, what percentage came from Hoover-Chino? A. 31 per cent.

Q. And what percentage from M.W.D. Hayfield-Highgrove? A. Six per cent.

Q. Now, of what Colton gets, what percentage is out of state power according to your exhibit? A. 37 per cent.

Mr. Cragun: Thank you, Mr. Sack. That concludes the direct, Mr. Examiner.

848

Mrs. Pajalich: Mr. Examiner, in view of the fact that this exhibit has been passed around just a few moments ago, and also in view of the fact that we shall undoubtedly have to return here, may I ask on behalf of the California Commission that cross-examination of Mr. Sack on this exhibit be deferred until after the conclusion of Mr. Patterson's cross-examination which was scheduled to be today.

Mr. Bury: I don't know what our schedule is going to be. I would like to ask Mr. Sack at least a couple of preliminary questions right now, if I might, and then as far as I am concerned, I would be willing to cross-examine him at any time that it meets the other parties' convenience—if it is today or next month. If we are going to be continued, I would prefer to defer it then. But if we can finish up today, I would be happy to cross-examine him today.

Mr. Cragun: We would rather complete the examination today than be required to return, if that can be worked, even at the cost of missing a plane. I would rather have it handled that way.

Presiding Examiner: There will be another plane tomorrow. You may step down, Mr. Sack. Mr. Patterson will take the stand.

(Witness excused.)

Whereupon,

LEONARD S. PATTERSON

resumed the stand and testified further as follows:

Presiding Examiner: Mr. Everett, do you have some questions of Mr. Patterson?

Mr. Everett: Yes, sir, we do.

Cross-Examination

By Mr. Everett:

7 Q. Mr. Patterson, you testified that you were employed by California Electric Power Company from 1936 to 1939, and during this period, did any of your duties include the tracing of out-of-state energy flow through utility system networks? A. I can't recall that it did, no.

Q. In the 21-year period which you have testified you have been employed by the California Public Utilities Commission, have you traced out-of-state energy flow through electric utility system networks? A. Not to any great extent. I perhaps did in an informal fashion in connection with the California Electric Power Company proceeding, wherein some of its energy crosses the state line into Nevada. I was not involved in the formal proceeding there, however, but I was familiar with the proceeding.

Q. Did you trace that energy, sir?

850

A. Yes. I think in that case it is very simple to trace it. There is one line that goes across the state line, and it goes in one end and comes out the other. So I guess I can say that I traced the energy there.

Q. Well, in that proceeding, did you trace out of state energy through electric utility system networks? A. Well, what do you mean by out of state? In that sense, the energy generated in California was transmitted across a state line into Nevada. I guess that was out of state energy as far as Nevada was concerned.

Q. Have you had any experience tracing out of state energy through a system comparable in size to that of the Edison Company? A. No.

Q. This California Electric Power Company proceeding, sir, which you mentioned, was the Federal Power Commission involved in that proceeding? A. Yes.

Q. Are you sufficently familiar with the Hoover-Davis-Parker system of the U.S.B.R. to qualify as an expert on these systems with sufficient familiarity to testify on their methods of operation and disposal of the energy generated in these plants? A. Well, that is a pretty broad qualification. I would be glad to answer any questions that I can answer. I am not

851

an expert in the sense that I am familiar with their day-to-day operations. I know the system generally.

(851)

Q. You have testified, have you not, that you investigated the facilities involved in this proceeding here, City of Colton and Southern California Edison Company? A. Yes.

Q. Were your field investigations limited to Edison's Company facilities located within the State of California? A. No.

Q. What other facilities did your field investigation cover, sir? A. I made a field investigation and inspected—you are asking me of the out-of-state facilities. I made a trip to the Colorado River, and inspected Parker Dam. Of course, that is in California. But I went on up the river to Davis Dam, which is located outside California, and also Hoover Dam, which is outside of California.

Q. Did you take any data from the records at Parker and Davis and Hoover Dams? A. No, I did not.

Q. Then you just examined the physical facilities at those three dams? A. Yes—the facilities and the transmission lines that ran between the generating plants and into California.

Q. You have you testified, have now not, that under normal

852

operating conditions, all the energy sold to the City of Colton must come from the 66 kv bus at the Highgrove transmission substation? A. I believe that is right.

Q. Then any energy entering the sale to the City of Colton under normal operating conditions must of necessity be transmitted over the 66 kv line between Highgrove 66 kv substation and the Colton 66 kv substation, is that right? A. Yes. Your question, as I understand it, is limited to under normal operating conditions.

Q. Yes, sir. A. And were you tying it to only the 66 kv lines which run directly from Highgrove to the Colton substation?

Q. Yes. A. Well, I will have to qualify my answer, then, because there are other 66 kv lines that go in, not a direct path, but by which energy can get from Highgrove to Colton sub, namely, there is a line from Highgrove to Cardiff, and then from Cardiff to Colton.

Q. Well, these conditions referred to in the question, sir, were normal operating conditions. A. Well, I believe my testimony is that under normal operating conditions all of the energy would come from the 66 kv bus, at the Highgrove substation, and there is a network of 66 kv line which goes from there down to the Colton

853

Substation, and on the way, as part of the grid system, Cardiff substation is also connected in there. All of those lines are shown in my Exhibit No. 27.

Q. Thank you.

Mr. Patterson, isn't Cardiff served by the Colton 66 kv substation, and by the Highgrove 66 kv substation? A. Well, Cardiff substation is a distribution substation. Colton substation is a distribution substation. I would say that they are both served from the Highgrove substation.

Q. Mr. Patterson, I am going to show you Edison Company's 1958 power system statement, FPC Form No. 12, Schedule 18B, page 31(c).

Mr. Bury: Is that for the year 1958, Mr. Everett?

Mr. Everett: Yes, sir.

By Mr. Everett:

Q. Referring to the form which I have just handed to you, Mr. Patterson, does that not show—does that not show the distance between Colton and Cardiff? A. Yes, it shows the distance here.

Q. And then two pages later on, I believe, in the same schedule, it shows the distance between Cardiff and Highgrove? A. Yes.

(853)

Q. Would you state what those distances are, please, sir? A. That shows the length of the 66 kv line from Colton

854

to Cardiff to be 4.5 miles, and the length of the line from Highgrove to Cardiff is shown as 6.6 miles.

855

Q. Could you tell us what that schedule shows as the distance from East Colton and West Colton to Highgrove?

Excuse me, East Highgrove and West Highgrove to Colton, as shown on that schedule. A. I presume you mean the length of the circuits from Highgrove to Colton.

Q. Yes. A. Designated East and West Highgrove. They are each shown as 1.8 miles.

Q. Sending energy from Highgrove to Colton by Cardiff would mean sending energy a distance of 11.1 miles? A. That would be the total of the two parts of the line —that is the line from Highgrove to Cardiff and Cardiff to Colton, yes.

Q. By the direct line from Highgrove to Colton would be 1.8 miles? A. That is correct.

Q. Mr. Patterson, if out of state energy reaches the Highgrove 66 KV substation bus under normal operating conditions, it must of necessity be traced into the sale to the City of Colton, is that not true? A. You are posing a hypothetical question? I want to be sure I understand it. You say if it gets on the 66 KV bus?

Q. In answer to a prior question, I believe you testified that any energy entering the sale to the City of Colton under

856

normal operating conditions would be transmitted over the 66 KV line between Highgrove and Colton. Is that not correct? A. Well, I don't think that was my testimony. I think my testimony was that the energy to the Colton substation would come from the 66 KV bus at Highgrove substation. Now, whether or not it all goes over one of those particular 66 KV lines, or a combination of those lines, I don't know. They all are possible paths from the Highgrove 66 KV bus to the Colton substation where the energy is divided, then, for distribution to the customers.

Q. You have testified, I believe, that under normal operating conditions the energy supplied the Highgrove 66 KV bus is supplied from the Highgrove 220 KV bus. A. Well, yes, that would follow.

Q. And you have testified also, have you not, that if there is a load amounting to 80 megawatts on the Highgrove 220 to 66 KV banks, and there is 90 megawatts flowing out of Highgrove on the Chino line, or a total of 170 megawatts, while there is a flow of 30 megawatts from the Hayfield connection, there would have to be a flow from the Etiwanda connection of 140 megawatts, so that the system could be balanced? A. Yes.

Q. Is that correct?

857

A. That is correct.

Q. And, further, that since the load of 80 megawatts on the transformer banks exceeds the Hayfield source of 30 megawatts, it followed that at least the difference of 50 megawatts if not the entire 80 megawatts, would come from the Etiwanda connection? A. That is correct.

Q. Now, let's suppose we have 140 megawatts coming in from the Hayfield connection, and 30 megawatts coming in from Etiwanda, and suppose that the entire requirements of 90 megawatts used in your example is being supplied the Chino line. Then 50 megawatts from Hayfield would necessarily have to go to help supply the 80 mega-

(857)
watts requirements of the transformer banks connecting the 220 KV and the 66 KV Highgrove buses, would it not? A. Well, under the figures you have assumed there, that would be the conclusion.

Mrs. Pajalich: May I have those figures again? Maybe I didn't hear you correctly, but I didn't get a balance on either side of the system.

(The question, as recorded, was read by the reporter.)

By Mr. Everett:

Q. Is your answer yes to that question? A. My answer is yes, under those assumed figures.

858

Q. Now, all that I have done in this hypothetical question is simply to reverse the Etiwanda and Hayfield values, have I not? Whereas, you used, I believe, for Hayfield a value of 30 megawatts, I have used a value of 140 for Hayfield, and you used 140 for Etiwanda, and I have used 30 for Etiwanda. Isn't that correct? A. That is correct.

Q. Now, this example that I asked you about, involving 140 megawatts flowing from Hayfield, and 30 megawatts from Etiwanda, of course is just a hypothetical example. But the example which you mentioned in your testimony was also hypothetical, was it not? Where you had 30 megawatts coming in from Hayfield and 140 coming in from Etiwanda? A. I believe I had some basis for it. Well, that was one of the difficulties, as I tried to show in my direct testimony. There wasn't enough data to present a clear example. The nearest I could find to it was in one of the examples in Exhibit No. 11, and I took from Sheet No. 4 in that exhibit, which was Mr. Sample's study on the calculator board. That example showed 140 megawatts coming in from Etiwanda, a load of 80 megawatts on the transformer banks, and Chino was 61 in that.

Q. But you used 90, did you not? A. I used 90, that is right. The figures I have used are hypothetical. They are not supported in any—with any

particular data in the record.

Q. Thank you.

Well, then, is this hypothetical example which I have put to you, the 50 megawatts of Hayfield energy and the 30 megawatts of Etiwanda energy would go to supply the requirements of the City of Colton, would they not? A. They would go to supply the requirements of the Colton substation. I cannot trace what part of the energy goes where, beyond the Colton substation. But they would go to the Colton substation.

Q. Well, in the hypothetical example I asked you about, Mr. Patterson, where we have 140 megawatts coming in from Hayfield, and 30 megawatts coming in from Etiwanda, and 90 megawatts going to Chino, after supplying the Chino load, where would the balance of the megawatts go? A. Well,—can I have that back?

(The question, as recorded, was read by the reporter.)

The Witness: Well, the balance of the megawatts would go into the 220 to 66 KV transformer bank.

By Mr. Everett:

Q. Now, if you had only the values of 140 megawatts coming in from Hayfield, and, let's say 90 megawatts going out on the transformer banks, the energy flow would remain the same—energy flows would remain the same in magnitude and

direction, would they not?

Mr. Goldberg: Let's see if I understand your example. This is a different illustration, in which you have only

(860)

the values of 90 on the banks and 140 coming into Highgrove?

Mr. Everett: I beg your pardon. That should have been—that value for the transformer banks was the same as before—80 megawatts, not 90.

Mr. Goldberg: And what is going into Highgrove?

Mr. Everett: 140 megawatts coming in from Hayfield.

Mr. Goldberg: And are there any values for the Chino line and the Etiwanda? No values known?

The Witness: Is there a question?

By Mr. Everett:

Q. If you have only these values—140 megawatts coming in from Hayfield, and 80 megawatts going out on the transformer banks, the energy flows would remain the same in magnitude and direction, would they not? A. I don't know.

Q. As in the previous example? A. No, not necessarily, no.

Q. What would the changes be, Mr. Patterson? A. Well, I don't know. You set up an example here. You have got four lines or paths here, and you have given me two quantities, and have not told me anything about the others. So I don't know what would happen.

861

Q. Well, without stating the values for—well, suppose what you have are just the two values of 140 megawatts coming in from Hayfield, and 80 megawatts going to the transformer banks, the same as before. Would the energy flows remain the same in magnitude and direction as before? A. What energy flows are you referring to?

Q. The energy flows to which you referred in the hypothetical question which you answered. A. I am sorry. I don't understand the question.

Q. Mr. Patterson, referring to Item I by Reference—that is Schedule 18-B of Edison's Form 12 for 1958, page 31—do you have that, sir? A. Yes.

Q. Would you please read the figures shown there for Etiwanda to Highgrove and Hayfield to Highgrove, and Highgrove to Chino in Column 9, at the time of the December monthly peak? A. Let's see. The first one you asked for was Etiwanda to Highgrove?

Q. That is right. A. That shows under the column for December, line load at time of monthly system peak, is estimated at 69 megawatts. What was the second?

Q. Hayfield to Highgrove. A. Hayfield to Highgrove is estimated at 61 megawatts.

862

And did you ask for Highgrove to Chino?

Q. Yes, sir. A. And Highgrove to Chino is estimated at 6 megawatts.

Q. Now, under the conditions shown in Item I by Reference, Mr. Patterson, where there is 69 megawatts flowing from Etiwanda to Highgrove, and 61 megawatts from Hayfield to Highgrove, and 6 megawatts from Highgrove to Chino, would you agree that at least 55 megawatts from Hayfield was transmitted to the 66 KV bus at Highgrove? A. Under those assumed conditions, at least 55 megawatts would come from the Hayfield connection.

Presiding Examiner: Mr. Everett, we will take the afternoon recess at this time.

(Whereupon, at 3:20 p.m., a recess was taken until 3:30 p.m.)

Presiding Examiner: Are you ready, Mr. Everett?

Mr. Everett: Yes, sir.

By Mr. Everett:

Q. Mr. Patterson, do you consider the 220 KV lines connected to the 220 KV Highgrove substation bus to be transmission lines? A. Yes.

Q. Do you consider the 66 KV lines connecting the Highgrove and Colton substations to be transmission lines? A. Yes.

863

Q. And the energy reaching the City of Colton from Edison must be delivered over these 220 KV and 66 KV lines under normal operating conditions, is that correct? Perhaps I should say the energy being delivered to the City of Colton by Edison must be delivered over these 220 KV and 66 KV lines, under normal operating conditions. A. It would have to pass over those lines, yes.

Q. Would you then conclude, Mr. Patterson, that the energy sold and delivered to the City of Colton by Edison was transmitted over the 220 KV and the 66 KV lines of Edison? A. Well, it was certainly over some of their 220 and 66 KV lines.

Q. In your Exhibit 29, Mr. Patterson, you show the energy generated by Edison and the energy received from Hoover and Hayfield containing at times components of out of state energy flowing into a large tank, do you not? A. No. I didn't intend this to look like a tank.

Q. Well, I didn't mean by using that word tank to use a derogatory description of the exhibit.

Q. You show energy generated by Edison and energy received by Edison from Hoover and from Hayfield flowing into a pool, do you not? A. Yes.

Q. And some of this energy contains components of out of

864

state energy, does it not? A. Some of what energy?

Q. The energy flowing into the pool that is shown in Exhibit 29.

Mrs. Pajalich: Mr. Examiner, I think it has been stipulated, certainly admitted by Edison, that there is some interstate energy received on the Edison system. The whole point is whether or not it gets to the City of Colton.

Presiding Examiner: I think that is what staff is driving at.

(The question, as recorded, was read by the reporter.)

Mrs. Pajalich: I offered to stipulate there was some interstate energy flowing into the pool.

By Mr. Everett:

Q. This energy that is flowing into the pool, as shown in Exhibit No. 29 becomes a mixture, does it not, and the energy going from Highgrove to Colton and also the City of Colton also contains components of out of state energy? A. I don't know that it becomes a mixture.

Q. But on Exhibit No. 29, you haven't segregated any of this energy. It all comes into one place, into one pool, does it not? A. All the generation flows into the integrated network. I made no attempt to show any segregation.

865

Q. You made no attempt to show any segregation on Exhibit 29. That is what you meant? A. That is right. I made no attempt to.

Q. Well, then, there may be some out of state energy flowing to the City of Colton, according to this representation on Exhibit 29? A. You want me to speculate? There may or there may not be. I don't know. I know of no way of establishing that.

Q. The City of Colton purchases all of its electric requirements from Edison Company, does it not? A. To the best of my knowledge, it does.

Q. Then from the standpoint of the City of Colton the energy received from Edison is 100 percent of its requirements, is it not? A. I presume it is.

(865)

Mr. Everett: The staff has no further questions to ask Mr. Patterson.

Presiding Examiner: Mr. Goldberg?

By Mr. Goldberg:

Q. Mr. Patterson, in connection with that California Electric Power Company case to which reference was made during your cross-examination by staff counsel, were you referring to a system that has a network of multiple loads and multiple sources? A. The California Electric Power Company is such a system,

866

yes, sir.

Q. In that respect, it is like Southern California Edison Company, is it not? A. In a smaller degree it is.

Q. Did you make any diagrams in connection with your assignments in that California Electric Power Company case to trace electric energy? A. I didn't have a specific assignment on that case. I presume in analyzing what was happening there, you might say I might make a diagram, because it is very simple to make such a diagram.

Q. And you are talking about single line diagrams, of course? A. Yes.

Q. Did you show the bus connections in those diagrams? A. No.

Q. In connection with any of your assignments where you have attempted to trace electrical energy, have you made single line diagrams? A. In this study, I made here I made single line diagrams, yes.

Q. I mean in any other situations during your capacity as an engineer for the California Commission. A. No, I can't recall that I did.

Q. Now, the record already indicates that on December 22, in the company of Mr. Bury and Mr. Ashley, and I think Mr. Sample, you went on a field trip to inspect some of the facilities of Southern California Edison Company. This trip that you made to the Colorado River, was that a one day affair? A. No, that took three days.

Q. Were you alone on that trip? A. Was I alone?

Q. Yes, sir. A. No.

Q. Who was with you? A. My wife was with me on the trip.

Q. I see. I am in favor of that company.

At transcript 379, Mr. Patterson, you state that nearly all of the energy is fed into this 220,000 volt transmission system from generating plants at 14 separate locations. To what exceptions do you have reference in that sentence that appears at lines 6 to 8 of the transcript 379? A. Could I see the reference?

Q. Yes. A. There are some local hydro plants in the San Bernardino Mountains which do not feed into the 220 KV system, and I believe also the Edison Company's Long Beach plant 2 and 3 feed into the 66 KV, not into the 220 KV.

Q. Is the generation from those plants reflected in your Exhibit No. 29? A. Yes.

Q. I take it on Exhibit 26, the arrows are not intended to reflect any direction of flow, is that right? A. That is right.

Q. They are merely intended to point to the general direction of the location of the particular facility name near the arrow tip, is that right? A. That is correct.

Q. Now, you have used an illustration at transcript 383 in which the flow from Hayfield is less than the load on the 66 KV bus. You will find that at lines 6 to 18.

(868)
Now, under the circumstances, where the flow from Hayfield was less than the load on the bus, you indicated that you could identify the source of the energy, did you not?

Mrs. Pajalich: Could you refer to the specific line, Mr. Goldberg?

Mr. Goldberg: That is lines 6 through 18. It is the whole answer.

The Witness: Yes.

By Mr. Goldberg:

Q. And did you not assume that at least in part the supply of the load on the 66 KV bus was satisfied by the flow from Hayfield?

869

A. I think in the example I gave the supply would be satisfied at least in part from the Etiwanda connection.

Q. Well, this is what I want to find out, because I was not too sure that I knew precisely what you were saying.

Were you saying at all that under those circumstances the 30 megawatts supplied the 80 megawatt load on the 66 KV bus? A. No, I ddn't intend to imply that.

Q. You only intended to say that since 30 is insufficient to supply 80, 30 couldn't supply all of the 80? A. That is correct.

Q. Now, if we reverse the situation, and have 30 coming in from Etiwanda to Highgrove, and 140 from Hayfield to Highgrove, would you say the same thing? A. Well, would my answer be precisely the same?

Q. Well, what would your answer be? A. As I understand your question, it is the same question Mr. Everett posed—you simply reverse the figures—is the conclusion the same. Except that then under those assumed conditions, at least part of the energy would come from Hayfield, rather than in the example I gave where at least part of the energy would come or all of it from Etiwanda.

Q. And that is because you couldn't possibly satisfy all of the load on the 66 KV bus under those circumstances with the 30 coming in from Etiwanda, is that right?

870

A. That is correct. It is a matter of mathematics.

Q. But when you have a situation where you have enough in your opinion coming in from Etiwanda into the Highgrove substation to satisfy the loads on the 66 KV bus, it is your position that under those circumstances you cannot say whether any part of the supply from Hayfield satisfies the load on the 66 KV bus, is that right? A. Yes, that is correct.

Q. And you would take that same position whether or not you knew the values on the Etiwanda and Chino lines? Isn't that so? A. Let me see if I understand your question. You are saying that if the supply from the Hayfield connection is greater than the load on the 66 KV banks, then it is indeterminate as to whether or not any of the Hayfield supply gets on to the banks. That is as I understand your question.

Q. As I understand your testimony, you are saying that at any time that Etiwanda is supplying an amount of energy in excess of that required to serve the 66 KV bus, you are not in a position to say whether any part of the flow into Highgrove satisfies any part of the 66 KV bus load, right? A. You say any of the flow into Highgrove?

Q. Yes. A. Well, the 66 KV banks have to be supplied from some

871

flow into Highgrove?

Q. Well, I have said that your position, as I understand it, is that when the flow into Highgrove from Etiwanda exceeds the requirements of the 66 KV bus, you are then, under those circumstances, unable to say whether any part of the flow from Hayfield into Highgrove in whole or in part is used to satisfy the requirements of the 66 KV bus, isn't that right? A. Yes, I think that is a fair statement.

Q. Now, I understand your testimony to be that when you don't have the values for Etiwanda and Chino, you are unable to say whether any part of the flow into Highgrove from Hayfield satisfies the requirements on the 66 KV bus, is that right? A. No. I think if the flow in from the Hayfield connection is less than the Highgrove bank load, obviously some of it would have to come from Etiwanda, or the Chino line.

Q. But under those circumstances, you are not saying any part of it is going to the 66 KV bus, as I understood your testimony. Didn't you give us an illustration where you have 30 going into Hayfield—rather coming from Hayfield, and 140 coming from Etiwanda, with 80 on the 66 KV bus, and you said that you were not to be understood—this may not be your precise words, but that is the import of it—you were not to be understood as tracing any part of the 30 into the 66 KV bus, isn't that so?

872

A. Yes, under those conditions I could not trace any of the 30 from Hayfield into the 66 KV bus.

Q. But when the load from Hayfield to Highgrove, rather the supply is less than the load on the 66 KV bus, are we to understand that under circumstances where you don't have the values for Etiwanda and Chino, you are then able to say that the supply to the Highgrove substation from Hayfield does at least in some part satisfy the load on the 66 KV bus? A. No, I think it is indeterminate.

Q. In other words, your situation remains the same whether or not you have values for Etiwanda and Chino, is that right? A. No, it doesn't, because when you have values for—well, whether or not you have values for Etiwanda and Chino, under the situation with 30 coming in from Hayfield and 80 on the transformer banks, I can only say or conclude that some of the energy then comes from the Etiwanda, or the Chino line.

Q. Or both? A. Or both, yes.

Q. Well, my point is this. As I read your testimony on transcript 383 and 384, you are saying that when the load on the bus is in excess of the supply from Hayfield to the Highgrove substation, under those circumstances, whether or not

you have the values on Chino and Etiwanda, you are unable to identify any part of the supply from Hayfield on the 66 KV bus. Isn't that right? A. Well, in my estimation it makes a difference whether or not I know values for the Etiwanda and Chino lines. My answer would vary, depending upon what the knowledge I had of the input or output from those other two lines.

Q. But, your answer does not vary, according to the answers on 383 and 384, when the supply at Highgrove is exceeded by the load on the bus, isn't that so?

Look at your answer on 383, lines 6 to 18, and then look at your answer at 384, lines 3 to 7. A. Let me check that. I had not checked 384.

Well, under the examples I have used there, that is the result.

Q. Yes. Did you intend by your answer at lines 14 to 18 of transcript 385 to say that, "It is not possible to conclude that any out of state energy has been delivered to the City of Colton under any and all circumstances since watt meters were not installed in the Etiwanda and Chino lines at the time of the FPC staff investigation nor

(873)

at any other time to my knowledge." Now, if you missed it, I added, "Under any and all circumstances", to your answer. A. I think my answer meant that under any and all circumstances, as I know them to exist, a conclusion could not

874

properly be drawn that out of state energy was delivered to Colton.

Q. Did that answer, as you have just elaborated on it mean to say that you have examined all of the hours and data in Exhibit 3, have tested the situations based upon those data, and have concluded that out of state energy cannot be traced to the City of Colton at any time shown in Exhibit No. 3? A. Well, I examined the data in Exhibit 3 rather carefully, and the data that is given in there is the load on the Hayfield connection, the supply or load, and the load on the transformer banks at Highgrove sub. In other words, there were only two sets of figures set forth. The other two are missing—namely the loads on the Chino and the Etiwanda lines.

Q. In other words, that brings you back to your answer that absent those values, your position is you cannot trace out of state energy to the City of Colton. A. In the absence of values for those lines, yes, sir.

Q. And that is what you meant by your answer at lines 14 to 18 of transcript 385? A. Yes.

Q. Under normal operating conditions is it true that the Switch No. 246 is operated open? You will find that on your switching setup, Exhibit No. 28.

875

A. Yes.

Q. And under normal operating conditions is Switch No. 371 operated open? A. Yes, that is my understanding.

Q. When the switch is closed, is Cardiff power still coming off the Highgrove 66 KV substation? A. It is coming from there, or possibly from one of the local hydro plants.

Q. Do you know of any means of supplying values for the Etiwanda and Chino lines in the absence of watt meters? A. No, other than by selecting—by using a calculating board, such as was done by one of the Edison witnesses.

Q. That is what I mean. Referring to your exhibit—first, let me ask you how is service to the City of Riverside affected by Southern California Edison? Is it out of the Highgrove substation?

Mrs. Pajalich: Mr. Examiner, I am going to object to any testimony being elicited from this witness on the service to the City of Riverside as completely outside of the issues of this proceeding.

Mr. Goldberg: Mr. Examiner, I don't mind saying that at least in part my questions referred this morning and are now related to this contention that de minimis somehow has a bearing in this case. Now, we take a position that the company

876

and the California Commission counsel have completely misconstrued this de minimis proposition. But under any theory of de minimis, it is our position that this Commission could not conclude that the service here involved is de minimis.

Now, with respect to this question of de minimis, I think we are entitled to develop in the record evidence necessary to meet every aspect of the problem of de minimis, and as we see it there are four possible analyses of the question.

Now, I don't think, Mr. Examiner, I am required to go beyond that to state the four possible approaches. I will if the Examiner wishes. But I don't think it is necessary.

Mrs. Pajalich: Mr. Examiner, the theory of de minimis doesn't involve sales to the City of Riverside or the City of Azusa, or the City of Anaheim. If counsel has anything directed to sales for resale to the City of Colton, that is one thing. But to bring in the other cities, after staff counsel, in one of the previous hearings, objected to the receipt of evidence of such sales and was sustained by the Examiner, I believe, is just trying to beat a dead horse.

Mr. Goldberg: Do you have the reference to the record you are referring to?

Mrs. Pajalich: Yes.

Mr. Bury: I still haven't heard any comment that would tend to indicate this pending question is relevant to any issue

in this case. I think certainly when we talk about de minimis, we are talking about triviality of interstate flows. There is no assertion on my part about de minimis service to Colton.

Mr. Goldberg: Mr. Examiner, is it the position of the Edison Company that if the interstate power involved in service to Riverside were clearly substantial, that the Commission's jurisdiction would extend to that sale, and it would be entitled to the benefits of the protection of the Power Act. But the City of Colton, assuming for the sake of argument, its share of interstate power were in the percentages shown on Exhibit 29, it is not entitled to the protection of the Power Act?

Presiding Examiner: Mr. Goldberg, the issue here is, as raised by the City of Colton in the application, whether or not interstate energy is being sold by Edison to the

City of Colton. The issue is not involved as to any other California town. The objections are well taken.

Mr. Goldberg: Mr. Examiner, by your ruling, it seems to me that the various aspects of de minimis are ignored, and that we are denied the opportunity to develop the necessary facts to make the necessary legal arguments.

Presiding Examiner: Well, the de minimis ruling may apply to the City of Colton. That doesn't necessarily mean it applies to other California towns who are not parties to this action.

Mr. Goldberg: That is the point, Mr. Examiner. I perceive that the Examiner is dealing with the subject of de minimis from one aspect. But that is not necessarily the aspect in which your must deal with the subject of de minimis.

Presiding Examiner: It is the only aspect before the Examiner at this time, and that involves the City of Colton.

Mr. Goldberg: No. I submit, Mr. Examiner, the matter of de minimis runs beyond the City of Colton.

Presiding Examiner: You can talk about that to me in your brief,

Mr. Goldberg: The point I am making is that we are being precluded from developing any facts in connection with the arguments.

By Mr. Goldberg:

Q. Referring you to Exhibit 29, Mr. Patterson, am I correct that as you have depicted the generation of Edison Company, it appears that about 7 percent of the supply is from out of state? A. That is correct.

Q. Now,—— A. For the year 1958.

Q. Yes. Now, what is the average cost of that power purchased from the Federal agencies, Hoover, Davis?

(878)

Mr. Bury: Your Honor, now I know we are going beyond the bounds.

879

Presiding Examiner: The Examiner is interested in that question. You will find that in Exhibit 14.

Mr. Goldberg: Is it in Exhibit 14? If the witness knows.

By Mr. Goldberg:

Q. Do you know the answer to my question, Mr. Patterson? A. I don't have it in my head, but I believe it is in Form 1—what the Edison Company pays for Hoover power.

It is a matter of record.

Q. But you don't know offhand what it is? A. No, I would have to refresh my memory.

Q. Is it a few mills? A. It varies from year to year, because there is a big difference between whether or not they are getting secondary power along with the firm power.

Q. Is it cheaper than Edison's own production?

Mrs. Pajalich: Mr. Examiner, I will object to that as being immaterial to any issue in this proceeding.

Mr. Goldberg: Mr. Examiner, it bears directly on the question of de minimis. Counsel is taking the position that de minimis means only the percentage of kilowatt power. We are willing to meet them on that proposition. But I submit to you that de minimis could run well beyond that, into the question of economics. Seven percent of this out of state energy could mean a great deal more to this company than 50 percent of its own production.

880

Presiding Examiner: As far as this witness is concerned, it is certainly outside of his direct testimony.

**Mr. Goldberg:** He has put in the exhibit here to support this proposition of de minimis.

**Presiding Examiner:** He didn't put in any testimony that I heard on direct about the cost of it. The objection is well taken.

By Mr. Goldberg:

Q. In consideration of this question of de minimis, Mr. Patterson, did you consider the cost of the power that is produced by Edison as compared to the cost of the power purchased from out of state? A. No, I did not.

Q. Were you asked to do so? A. No.

Q. Now, the assumptions in your Exhibit No. 29, as I understand it, is that all of these sources of supply are available to serve the City of Colton, isn't that right? A. They are all available.

Q. You say they are. A. They are available.

Q. Do they serve the City of Colton? A. I don't know.

Q. Now, if they don't serve the City of Colton, that would change your percentage on your Exhibit 29, isn't that so?

881

A. No.

Q. Your Exhibit 29 assumes that—not only that they are all available, but in fact do supply the requirements of the City of Colton. Isn't that so? A. No.

Q. Could you possibly get the percentage that you have shown on the exhibit without assuming that all of the pool of energy is available to supply the Colton load? A. Yes. This is simply a mathematical determination.

Q. I know it is a mathematical determination, but in that mathematical determination did you not have to

(881)

assume, in making it, that all of the California generation, plus all of the out of state generation, is available to serve the City of Colton and does serve it? A. Not necessarily.

Q. Isn't that .15 percent mathematically derived on the basis of those assumptions? A. No. I didn't have to make any such elaborate assumptions. I simply divided the kilowatt hours delivered to the City of Colton by the total transmitted to the Edison system. I was not looking beyond that.

Q. Now, does that mean we are not to understand from reading your exhibit that you are saying that all of the energy was available and did—could have been used to supply the City of Colton?

882

A. No, I don't think that I said it was available and did supply the City of Colton.

Q. If the out of state energy were the only energy available to supply the City of Colton, what percentage would we change that .15 percent to?

883

A. I am not—if I understand your question, you are saying if the Edison Company only had available for the City of Colton out of state energy, which is not the case here, what would be this percentage I would reflect here?

Q. I don't have to make the assumption that is not the case, because you have not made any assumptions about the availability of supply. I just want you to relate the load—the supply to the City of Colton, to the out-of-state load that you show on the exhibit, and ask you how does that change the .15 per cent? A. You want me to relate the 23 million kilowatt hours to the total out of state energy?

Q. That is right. A. It would appear to be about 2 per cent.

Q. Now, is it not the fact that at particular times of the year the out-of-state energy may represent a greater proportion than the 7 per cent shown for the total year as related to total supply on the Edison system? A. This certainly reflects the average condition for the year, so it could represent more or it could represent less at any particular time.

Q. And so, too, the .15 per cent purports to represent the situation over a 12-month period in relation to the total sources available to Edison Company, is that right? A. Yes.

884

Q. Now, then, at particular times of the year, the .15 per cent would be greater, would it not? A. Not significantly, no. I would expect there would be very little difference.

Q. Have you tried it day by day? A. No.

Q. Have you tried it hour by hour? A. No.

Q. Do you have any reason to say that at certain hours the out of state energy to Colton, based upon your exhibit, is not 100 per cent of out of state energy?

Mrs. Pajalich: I am going to object to that, Mr. Examiner, on the ground it assumes something not yet in evidence, that any interstate energy gets into the City of Colton.

Mr. Goldberg: That has been established 8 ways from Sunday.

Presiding Examiner: Read me the question, Mr. Reporter.

(The question, as recorded, was read by the reporter.)

Mr. Goldberg: Let me restate the question.

(884)

By Mr. Goldberg:

Q. You have made no hour to hour study of the conditions of loads and supply on the Edison system, isn't that so? A. In connection with this proceeding?

885

Q. Yes. A. Oh, in a sense I have, from studying the data gathered by the Federal Power Commission staff. That gave hour to hour data. And I observed the variations in that data.

Q. But that data you said cannot assist you in determining the out of state energy that goes to the City of Colton, is that right?

Mrs. Pajalich: The same objection. It hasn't been shown that any out of state energy goes to the City of Colton.

Mr. Goldberg: My question was that his testimony was that the data in Exhibit 3 didn't help him to determine whether there was out of state energy to the City of Colton.

Mrs. Pajalich: Well, in that form I have no objection.

By Mr. Goldberg:

Q. Is that right? A. No, it didn't help me.

Q. Now, then, did you make any studies on an hourly basis or a daily basis or a monthly basis which would enable you to tell us, as you have purported to tell us on a yearly basis, the percentage of out of state energy to the City of Colton?

Mrs. Pajalich: Same objection.

No evidence to show that any out of state energy is delivered to the City of Colton.

Mr. Goldberg: If counsel would listen, she would realize.

886

I am talking only about the assumptions inherent in Exhibit No. 29, and I am breaking down the year to hours, days and months.

Mr. Bury: I submit that the question attempts to relate .15 per cent over to the 177 million kilowatt hours on the other side, whereas the testimony is the .15 per cent is related to the total transmitted figure.

Mr. Goldberg: I have related it to the total in my question. I have not related it to just to the out of state energy.

Now, may we have an answer?

The Witness: I have shown in my exhibit a percentage of .15 per cent, which represents the relation of the kilowatt hours sold to the City of Colton to the total transmittted to the system.

By Mr. Goldberg:

Q. Over a year? A. Over a year. And my knowledge of the operation and the monthly sales to the City of Colton is that the load factor and the peaks of the Colton delivery corresponded very closely with the peaks on the Edison system. So I would expect this percentage to change very little.

Q. You have made no studies on an hourly basis, a daily basis, or a monthly basis. Isn't that so? A. I have examined the monthly deliveries and the

887

monthly transmitted on the Edison system, and I am familiar enough with it to know you would not get a significant change in the .15 per cent.

Q. What was the total generation on the system for October, 1958? A. Well, it is available in the various reports, Form 12 or Form 1.

Q. Do you know offhand? A. I don't know offhand, no.

Q. Do you know the generation from the out of state sources that was available in October, 1958? A. I don't have that figure in my head, no.

Q. What was Colton's load in October, 1958? A. Do you want to know?

Q. Yes.

Mrs. Pajalich: If you want the answer to the other questions they can be supplied, Mr. Goldberg, given a little time.

The Witness: Kilowatt hours sold to the City of Colton, October, 1958, that is sold for resale, 2,150,400.

By Mr. Goldberg:

Q. Now, just this question, am I correct that your Exhibit No. 29 arrives at the .15 per cent by relating the sales for the year 1958 to the City of Colton by Edison to the total supply available to the Edison system? Right?

A. That is right.

Q. Now, I am also correct that you do not know whether out of state energy is supplied to the City of Colton, and are unable to determine that, is that right? A. That is correct.

Q. You do not know what the percentages of out of state energy at any particular hour are supplied to the City of Colton, and cannot determine it, is that right? A. Not with the physical system as it exists.

Q. Your answer is yes, I am right, is that right? A. Yes.

Q. Did you say we are not to understand you are purporting to say that Exhibit No. 29 is a mixture of all the sources of energy on the system? A. It wasn't my endeavor to indicate it is a mixture.

Q. Does it mix? A. I don't know if it mixes or not.

Q. If it doesn't mix, for all you know, all of the out of state energy may just go to the City of Colton, isn't that so? A. That is a speculation a person could make.

Q. You can't disprove it, can you? A. I can't prove it and I can't disprove it.

Mr. Goldberg: Those are all the questions I have, Mr. Examiner.

Presiding Examiner: Mr. Bury.

Cross-Examination

By Mr. Bury:

Q. Mr. Patterson, you are generally familiar with the annual reports filed by Edison on Federal Power Commission Form 1? A. Yes.

Q. Are identical forms filed by Edison with the Public Utilities Commission of the State of California? A. Well, they are not identical, because I believe that the California Commission requires additional information that is not submitted on the Federal Power Commission Form 1 report.

Q. But except for the supplemental information, the remaining information in Form 1 supplied to the California Commission is identical with the information supplied to the Federal Power Commission? A. That is my understanding, yes.

Q. Are you familiar with the requirements of the uniform system of accounts for public utilities and licensees as prescribed by the Federal Power Commission? A. Yes, I am familiar with that.

Q. Are you generally familiar with the uniform system of accounts for electric corporations prescribed by the California Public Utilities Commission?

A. Yes.

Q. Are those two systems identical? A. I could not——

Mr. Goldberg: You mean the FPC system——

Mr. Bury: The uniform system of accounts, in which Edison reports both to the Federal Power Commission and the California Commission.

The Witness: I would not be able to testify they are identical in all respects. I am quite certain they are in all important respects. There could be some minor differences.

By Mr. Bury:

Q. Do you believe them to be identical with respect to the requirements for transmission and distribution plant accounting? A. Yes, I know they are identical there. I made the comparison.

Q. Referring to Exhibit 28, which was the open switching center diagram, are all of the facilities represented on that diagram accounted for by Edison in its form 1 and reports in distribution plant accounts? A. With the exception—it would be true with the exception of the small hydro plants which are designated on here, such as Little Creek and Mill Creek, are the two that I see at the moment.

Q. Those would be accounted for in generating plant? A. In production plant.

Q. Turning to Exhibit 27, which shows, I think, the proportion of 66 kv transmission system and substations, would the 66 kv lines shown on Exhibit 26 be accounted for in transmission plant accounts? A. Transmission, yes.

Q. Would Edison's Colton substation be accounted for in transmission plant accounts or distribution plant accounts? A. That would be in distribution plant accounts.

Q. All of these questions referring to the manner in which these matters are reported in form 1? A. Yes. That is correct.

Q. And Exhibit 28, which shows the 220 kv system, the facilities of the 220 kv line shown thereon would be accounted for in transmission plant accounts? A. What exhibit number did you say?

Q. 28. A. I believe that is 26. 26—the facilities—the transmission lines and substations on Exhibit 26 would be accounted for in transmission plant. There is a steam plant there shown, Etiwanda, would be in production plant.

Q. Referring to Exhibit 29, which I understand you prepared from data available for the year 1958, I believe

892

you said shows deliveries of energy from MWD to Edison at Hayfield represented about 1 per cent of the total energy available on the Edison system that 1 per cent being roughly 177 or 178 million out of 15.8 billion. Could you tell us the amounts of energy received by Edison from MWD at Hayfield in the year 1959, and the relationship of that amount to the total energy supplied the Edison system that year.

Mr. Goldberg: Mr. Examiner, doesn't this go beyond the scope of this witness' direct testimony?

Presiding Examiner: Well, it sounds to me like it does. Up until now we haven't had any objection.

Mr. Goldberg: I object on that ground.

Mr. Bury: Your Honor, we had, with respect to this particular pending question, the witness has testified as

(892)

to conditions in a given year. We have other testimony in this case about earlier years. And I am merely trying to establish the relationship. I think it is perfectly material. With all the questioning we have had on this exhibit.

Mr. Goldberg: It was all related to 1958 and to the theory underlying it. You are going beyond the exhibit, Mr. Bury, to bring in an entirely new year, as to which we have had no testimony as to the California generation, as to the load on the Highgrove substation. I press the objection.

Presiding Examiner: Read the question.

893

(The question, as recorded, was read by the reporter.)

Mr. Bury: The only further comment I have, Your Honor, is that the staff itself developed a figure going back to the year 1945.

Presiding Examiner: Well, one of the exhibits of the City of Colton claiming a refund for billings up to and including November 2 of 1959. The objection is overruled.

Mr. Goldberg: Mr. Examiner, I don't know how that is going to contribute anything to a determination of excessive revenues.

Presiding Examiner: I don't either, but we will take a look at it.

The Witness: For the year 1959 there was delivered to the Edison Company at Highgrove from the Hayfield connection 38,260,800 kilowatt hours. This represented about one-fifth of one per cent of the total transmitted on the Edison system for the year 1959.

By Mr. Bury:

Q. Mr. Patterson, you testified that—the manner in which the Public Utilities Commission of California has regulated rates charged by Edison historically to the City of Colton. Does the Public Utilities Commission of the City (sic) of California regulate rates charged by the City of Colton for the

894

energy it resells.

Mr. Goldberg: I object to that. It is utterly irrelevant to this proceeding.

Mr. Bury: Merely historical, Your Honor.

Mr. Goldberg: It is a legal question besides, Mr. Examiner.

Mr. Bury: I simply asked him if they had.

Mrs. Pajalich: Mr. Examiner, I think it is a material question, in view of the fact that various decisions which I have read, the Commission reports seem to place a good deal of emphasis on the fact that the ultimate consumer needs somebody's protection—whether the FPC's or that of the California Public Utilities Commission.

Mr. Goldberg: Counsel certainly realizes that the decision she has read relates to sales at wholesale in interstate commerce under the Federal Power Act, and that is all we are talking about here. There has never been any claim here that there is any authority in the Federal Power Commission over local sales by municipalities to its customers.

Presiding Examiner: What was your question again, Mr. Bury?

Mr. Bury: I merely asked Mr. Patterson whether or not the Public Utilities Commission of the State of California regulated the rates charged by the City of Colton for the energy that it resells.

895

Presiding Examiner: How does that have any bearing on whether or not Colton gets any out of state energy?

(895)

Mr. Bury: I think it may be directed a little bit more towards some other issues in this case: If the City of Colton gets their way on a great many of the issues in this case, we may come to the question of an accounting order, and I think perhaps this is premature, but I think the Commission has indicated an interest in earlier cases in knowing whether or not, if refunds are in any eventuality made, whether it would constitute a mere windfall to the company who gets that money, or whether there is some effective way to see that it gets back to the ultimate consumer who paid for it presumably in other words.

Presiding Examiner: The objection is sustained.

By Mr. Bury:

Q. Mr. Patterson, you have been asked several—on at least several occasions that I recall whether or not energy mixes, constitutes a mixture. I am wondering if you recall when Mr. Everett tried to develop, through his questions, I believe with Mr. Montgomery, that implicit in Mr. Miller's conclusions was an assumption that a load receives a proportional share of energy from every source available. I think you have been asked whether or not you agreed with such an assumption, that a load receives a proportional share of energy from each source available to it.

896

Mr. Goldberg: Is that the end of your question?

Mr. Bury: No, I have not asked the question yet.

Mr. Goldberg: I am sorry.

By Mr. Bury:

Q. I was going to ask you when the question as, here is whether or not the load receives energy from source A, does not an assumption that the load receives a proportional share of energy from each source assume the answer to the question.

Mr. Goldberg: Mr. Examiner, I object to the question. To begin with, I have difficulty seeing where this is cross-examination on anything presented by the witness.

Secondly, the predicate is completely erroneous. One predicate related to Mr. Miller's testimony, which I would like to have a reference to, because I don't remember it at all in that form.

The other predicate related to cross-examination of Mr. Patterson, and I have heard no such cross-examination of Mr. Patterson.

Mr. Bury: I think you misconceive what I say. I did not say Mr. Miller so stated. Mr. Miller certainly did not state in any manner whatsoever what assumptions he based his conclusions on. It finally came out, when Mr. Everett was cross-examining Mr. Montgomery, he began to ask him was not such and such an assumption implicit in Mr. Miller's testimony,

to wit, and he states the assumption. I can give you a line and page to the assumption Mr. Everett credits to Mr. Miller. And I am asking this witness about the propriety of that assumption.

Presiding Examiner: Read the question to me, Mr. Reporter.

(The question, as recorded, was read by the reporter.)

Presiding Examiner: I guess you better restate it, because I don't understand it either.

By Mr. Bury:

Q. Mr. Patterson——

Presiding Examiner: I gather, Mr. Bury, the reporter only read me the back half of the question. He didn't read me the front half of it. Isn't that correct?

Mr. Bury: I think that is right.

(897)

By Mr. Bury:

Q. Mr. Patterson, perhaps we can do this in pieces. First, would you agree that the problem facing the Examiner and the parties to this case, one of those issues, is does a particular load receive energy from one of several sources available to it? A. I think that is certainly one of the basic issues.

Q. And is it not your understanding that implicit in the analysis made by Mr. Miller is the assumption that where there are several sources coming into a common point, every load served from that common point receives a proportional share of the energy at the point, from each source? A. That would be my understanding.

898

Q. And if it is assumed that a load receives energy from each of several sources—say we have sources A, B and C—and it is assumed that it gets a proportional share from A, B and C, I take it it follows that you have also assumed that it gets energy from A, if you have assumed it gets energy from A, B and C proportionately? A. Yes.

Q. And isn't that assumption really the question originally stated—whether or not the load gets energy from A? A. As I understand your question, it is to the effect, is not the assumption or the conclusion reached by the FPC staff—was that not the conclusion reached by making an assumption which was the conclusion.

Q. Precisely. A. Yes.

Mr. Bury: That is all the questions I have.

Mrs. Pajalich: I have just about 1 or 2.

### Redirect Examination

By Mrs. Pajalich:

Q. Mr. Everett asked you if you did not consider that the City of Colton must be served by Edison from energy delivered over its 66 kv and 220 kv lines, and as I recall your answer was yes.

Is that not true of every customer that gets served by Edison, isn't the energy supplied over 220 kv and 66 kv lines at some time or another?

Mr. Goldberg: I object to that. That wasn't the cross-examination at all. The cross-examination was related to certain specific 220 and 66 kv facilities. And this question on redirect isn't related to those same facilities at all.

Presiding Examiner: As I remember, Mr. Montgomery said you couldn't divide the system—the 220 into certain parts. That you had to take it as a whole.

Mr. Goldberg: Mr. Montgomery admitted when I cross-examined him that we can talk about only a section of the facilities, because when we talk about that section of the facilities, the conditions on that section are a reflection of what is happening on the total system.

Anything that affects that section will affect it. Now, the question on cross-examination by Mr. Everett was related to flows of energy over certain specific 220 and 66 kv lines. And I submit, Mr. Examiner, that that was entirely in keeping with the exhibits brought in by this witness himself.

On Exhibit 26 he shows the production facilities related

to the area with which we are concerned, and facilities associated therewith. We haven't got the whole system there.

On Exhibit 27 he shows us certain specific facilities with which we are concerned in this case, and he doesn't show us the whole system.

On Exhibit 28 he shows us a switching center exhibit, related to a certain section of the system, and we don't need the balance of the system.

The only time he gets into the whole system is when he has this mixture of all the energy just going all over the place.

Mrs. Pajalich: I will reframe the question, Mr. Examiner, in view of Mr. Goldberg's impassioned pleas.

By Mrs. Pajalich:

Q. Are any other customers within the area of the City of Colton served from the same 66 kv and 220 kv lines as is the City of Colton? A. Yes, many of them.

Mr. Goldberg: May we have some of them named? Is Riverside one of them?

The Witness: I don't know. I have not examined that.

Mrs. Pajalich: I have no further questions of Mr. Patterson. And I should like at this time to renew my offer of Exhibits 26, 27, 28, 29 and 30 in evidence in this proceeding.

Presiding Examiner: I assume there may be some additional

questions of Mr. Patterson.

Mrs. Pajalich: From whom, Mr. Examiner?

Mr. Goldberg: From me. I think you have opened up the questions to my questions about Riverside—Mr. Examiner.

Presiding Examiner: And I have this question to pose to counsel now.

Can you conclude with Mr. Patterson?

Mr. Goldberg: In the matter of a minute or two as far as I am concerned.

Presiding Examiner: And with the witness for the City of Colton—in an hour's time?

Mr. Bury: Cross-examination of Mr. Sack should take about five minutes.

Mr. Everett: As far as the staff, we have no further questions to ask of Mr. Patterson or Mr. Sack.

Presiding Examiner: This court will be in recess until 9 o'clock tomorrow morning, and that will give you an hour, and we will get finished up, and the California Commission has a motion to strike some testimony. We will talk about the exhibits, and I will rule on them at that time. And we will set some time for filing briefs and so forth.

Mr. Bury: Mr. Examiner, before we close the record today, I just noted—I did not, as I recall, offer in evidence Exhibit 40, the photographs.

Presiding Examiner: 40 nor 41 have been offered yet. And Edison has 31, 32, 33 yet that have not been admitted.

Mr. Bury: If this is an appropriate time, we will make that offer.

Mr. Everett: Would you refresh my recolllection and state what 41 is?

Presiding Examiner: 41 is the last one. It was Mr. Sack's.

Mr. Cragun: I will offer that now, if this be an appropriate time. I was waiting until we were regularly reached for rebuttal—although Mr. Sack's testimony is the total rebuttal. Therefore, I now offer in evidence, on behalf of the City of Colton, Exhibit No. 41.

Presiding Examiner: Mr. Cragun, I will rule on it after the cross-examination of Mr. Sack.

Mr. Bury: We may have ourselves a real problem tomorrow morning on transportation. I really had not considered the possibility of running tomorrow morning.

(902)

Presiding Examiner: Mr. Reporter, as far as this session is concerned, it is recessed until 9 in the morning.

(Whereupon, at 5:00 p.m., the hearing was recessed to reconvene at 9:00 a.m., Tuesday, May 10, 1960.)

903

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TUESDAY, MAY 10, 1960.

The above-entitled matter came on for further hearing, pursuant to recess, at 9:00 o'clock a.m.

BEFORE:

HARRY W. FRAZEE, Presiding Examiner.

APPEARANCES:

(As heretofore noted.)

904

## PROCEEDINGS

Presiding Examiner: The hearing will come to order. Are there any preliminary matters at the moment?

(No response.)

If not, Mr. Sack——

Mr. Goldberg: I think we have just one or two questions of Mr. Patterson.

Presiding Examiner: All right.

Whereupon,

LEONARD S. PATTERSON

resumed the stand and testified further as follows:

Cross-Examination

By Mr. Goldberg:

Q. Mr. Patterson, is it not the fact that Riverside is served off the 33 KV bus which, in turn, is connected to the Highgrove bus? A. I would have to check a map.

Q. Would you? A. Well, according to the Edison Company system single line diagram—and I believe a copy of which is filed as part of the FPC Form 12—there are transformer banks between the 66 and 33 KV buses at Highgrove substation and from the 33 KV bus, lines run down to Riverside, Arlington and the area in that vicinity.

Q. Yes, sir. Let me just put before you Exhibit 37 which

was used for the purpose of placing some hypothetical questions to a witness in the case: If we assume that Generator A is supplying 50,000 Kw shown attached to the line running from Generator A at the lower right-hand portion of the exhibit, and if we assume further that Generator B is serving the 10,000, 20,000 and 30,000 Kw loads shown attached to the line running from Generator B, and is also serving the 20,000 load attached to—the second 20,000 load attached to the same line, under those circumstances would the connecting facilities that you see at the extreme right be hot? A. Yes.

Q. In other words, you would have voltage in the line but no current? A. I don't know if you would have current. It would definitely be hot. Your entire line that connects the two generating sources and from which loads are served would definitely be hot. You would have voltage on it and as to whether or not there would be any current I wouldn't know unless you had meters in the line.

Q. In my assumption I was assuming that I had used up the generation at B from all of the sources on the upper line and the generation from A at the load on the lower line.

Now, under that assumption, of course, the line would be hot beyond those loads without current? A. Well, under your assumption, if your assumption that the

906

loads use energy in accordance with the assumptions you made——

Q. Yes. A. —there would be no current.

Q. Yes. Thank you very much.

There was just some doubt in my mind, Mr. Examiner, that the record was precisely clear on that energy fact.

That is all we have, Mr. Examiner.

Presiding Examiner: Mr. Everett?

Mr. Everett: No questions, Mr. Examiner.

Mr. Bury: No questions.

Mrs. Pajalich: No questions.

Presiding Examiner: Thank you, Mr. Patterson.

(Witness excused.)

Presiding Examiner: Now Mr. Sack

Whereupon,

FREDERICK SACK

resumed the stand and testified further as follows:

Presiding Examiner: Mr. Everett, do you have any questions?

Mr. Everett: No questions, Mr. Examiner.

Presiding Examiner: California Commission.

Cross-Examination

By Mrs. Pajalich:

Q. Mr. Sack, have you ever made any load flow studies? A. No, I haven't.

907

Q. Have you ever made any studies to trace energy sources? A. Well, not under multiple conditions such as these.

Q. Have you ever made studies of the entire Edison system? A. No, I haven't.

Q. Are you familiar with Edison's system of load dispatching? A. No. No, not to any great extent.

Mr. Goldberg. Keep your voice up, Mr. Sack.

By Mrs. Pajalich:

Q. Referring to your Exhibit 41, for identification, does the placing of the broken line toward the middle of the page have some particular significance in your mind? A. No, not particularly; more or less just a line of demarcation, no definite point. It isn't intended to be a map.

Q. It is what? A. It is not intended to be a map.

Q. No. I notice that you have the Hoover Chino substation located more closely to the Highgrove substation, whereas as a matter of fact the Edison steam plant is geographically closer, isn't that a fact? The Etiwanda steam plant is closer geographically? A. Yes, I believe that is correct.

Q. What distribution substations are served from the Chino 66 KV transformer banks? A. What distribution substations?

Q. Yes, sir. A. Well, I wouldn't know just offhand.

Q. Do you know whether or not Narod, Upland, Genesha and La Habra are distribution substations which are served from the Chino 66 KV transformer banks? A. I don't know that.

Mr. Cragun: Object, your Honor.

The question has nothing to do with this exhibit or with Exhibit 29 which this was designed to restate in more accurate form.

The point is totally immaterial.

Mr. Bury: My response to that would be that I am sure Mr. Sack testified that it was his opinion that there was some—while the 220 and 66 systems of Edison were tied together, there was the separation of the distribution systems and he has drawn a line representing the division between the San Bernardino Redlands distribution and the balance of the systems as shown in the Hoover Chino line coming in easterly of that line. I think it is pertinent to show that that Chino substation served distribution substations located substantially west of that line.

Presiding Examiner: The objection is overruled.

The Witness: What was the question?

Mrs. Pajalich: Do you want the question re-read?

The Witness: Please.

(The question and answer, as recorded, were read by the reporter.)

By Mrs. Pajalich:

Q. What is your basis for showing 942 million, rounding the figures, kilowatt hours as flowing into the Edison system from Hoover Chino in the part of your diagram designated San Bernardino Redlands district when you don't know whether or not substations which are actually served from that Hoover Chino source are not located in the San Bernardino Redlands district? A. I wasn't trying to show it all, I imagine several hundred, substations that are serving from this entire system. I felt it only once pertinent were it Highgrove and Colton. I didn't attempt to show the usage out of the system.

Q. The what? A. I didn't attempt to show the distribution substations throughout the system. It would take much more of an exhibit than that.

Q. Why didn't you include the Ontario district too, then, in your computations? A. Well, I had to stop somewhere in order to keep it down to this exhibit.

Q. Well, what is the significance, then, of the arrow going to the left-hand side of Exhibit 41 which apparently shows two billion plus kilowatt hours flowing to the west?

Mr. Goldberg: Mr. Examiner, that is in the direct testimony—explanation why arrow shows two billion to the west.

Mrs. Pajalich: But the witness developed that figure arithmetically, Mr. Examiner, and he doesn't know the substations which are served from the Hoover Chino source. He has just taken an arbitrary figure down here in the lower corner which lists the San Bernardino Redlands kilowatt hours and has used that as a basis for his computation, and his whole computation is erroneous because he doesn't know what is served from the Hoover Chino source.

Mr. Goldberg: Mr. Examiner, the premises and assumptions of counsel are in error and involve impeachment of her own witnesses' presentation.

I draw your attention to Exhibit 26 in which the major production facilities for the San Bernardino area are shown as Etiwanda, Highgrove substation, Highfield (sic), Hoover Chino, precisely what this witness shows on his exhibit, and notice the switching center diagram which is Exhibit 28 in this proceeding showing the San Bernardino and Redlands districts and I submit, further, Mr. Examiner, that the witness has pointed out that the available supply in this San Bernardino Redlands district exceeded the loads and therefore it was obvious that the net flow was away to the western areas and nothing that has

been developed with respect to what serves what distribution system in any way affects the conclusion which is drawn in part from the very figures in Exhibit 29 and the balance, as the witness indicated, from the company's own reported figures.

(911)

This is obviously impeachment of Exhibit 29.

Mrs. Pajalich: Mr. Examiner, there is no impeachment of Exhibit 29. Witness Patterson did not testify as to any substations that were being served from the Hoover Chino source. This witness is proposing to testify as to the load which is served from that source and he doesn't know the distribution substations which are served from that source.

Mr. Goldberg: Mr. Examiner, in Exhibit 29 the witness for the California Commission, Mr. Patterson, purported to say that all of the generation and purchased power on the Edison system was available to supply the City of Colton and the reported facts are to the contrary as Mr. Sack's exhibit shows and he has laid that out as clear as one would want it laid out in his direct testimony.

Presiding Examiner: What is the question?

Mrs. Pajalich: Would you read it back, please?

(The question, as recorded, was read by the reporter.)

Presiding Examiner: Will you answer the question?

The Witness: It shows the net power going from the eastern area into the western area, which arithmetically is also shown on Exhibit 29.

912

By Mrs. Pajalich:

Q. Is arithmetically shown on Exhibit 29, did I understand you to say that, sir? A. That is right. If you perform the subtractions there, you will have that same thing, very closely approximating this figure.

Q. Do you find the figures shown in the lower corner of your Exhibit 41 under the heading district load? A. Right.

Q. Do you find similar figures to those on Exhibit 29? A. I don't say that. We were talking about the arrow up here showing the western flow.

Q. Yes.

Do the figures shown in the lower corner of your Exhibit 41 represent the entire load served by Edison Company in the San Bernardino and Redlands district? A. Well, I can't be certain that the total is every customer but all I can do is go by what was reported in Form 12.

Q. What was reported in Form 12? A. Right.

Q. Do those figures include resale customers do you know? A. I wouldn't know that.

Q. Do they include energy which flows from Highgrove

to Hayfield? A. You mean the figures in the lower right-hand corner?

Q. Yes. A. I would——

Mr. Goldberg: Did you finish your question?

By Mrs. Pajalich:

Q. I was going to add: which are reported in the annual report to the FPC. A. You mean do these figures in the lower right-hand corner include flows——

Q. Yes, to MWD. A. To MWD?

Q. Yes. A. I wouldn't know that. If that is what Edison included in those figures.

Mrs. Pajalich: I have nothing further, Mr. Examiner.

Presiding Examiner: Mr. Bury?

By Mr. Bury:

Q. Mr. Sack, with respect to Exhibit 41, looking at some of the arrows you have in the left-hand side, the Big Creek Highgrove approximately 3.8 billion and down below you designate as Huntington Beach 944 million.

I judge from the respective width of those lines and from the respective values shown there that the diagram is not in-

914

tended to be set out proportionately to the energy values shown? A. No, I didn't try that.

Q. Was the general thesis you had in mind there to show the resources and the loads east of this broken line and thereby derive what you call the net flow westward? A. That is right.

Q. You show the Hoover Chino line, energy coming into Chino from Hoover on the east side of that line, is that correct? A. Yes, I have shown it that way.

Q. And easterly of the line are the San Bernardino and Redlands districts, is that correct? A. San Bernardino Redlands district, yes.

Q. Do you know the Edison district next west of that broken line? A. I wouldn't be sure.

Q. Do you believe it would be Ontario? A. I believe it is Ontario, yes.

Q. Do you know what the district would be west of that? A. No.

Q. Do you believe it might be Pomona? A. I don't remember. I have probably seen it on the map but I don't remember just what it is.

Mr. Bury: I am going to show the witness the Form 12

915

Power System Statement filed by Edison for the year 1958, and turn to page 28-B, which is a map of Edison's commercial and distribution districts, wherein you can see the Redlands district, the San Bernardino district, the Ontario district and the Pomona district.

By Mr. Bury:

Q. I ask you whether or not within the Pomona district you see the location of Chino, the City of Chino? A. Yes.

Q. Do you know whether or not Edison's Chino substation is located in the immediate vicinity of the City of Chino? A. No, I do not.

Q. I will direct your attention to the Southern California map of transmission system which follows page 33 in that Form 12, and locate there for you the spot designated as Edison Chino substation and ask you whether or not that is located immediately below the name Chino which represents the city? A. Two names are one below each other.

Q. Is is not a fact that if the Edison Chino substation is located in the Pomona district then energy coming into that substation does not reach the Edison system east of the line you have shown on Exhibit 41? A. May I have that question again?

Q. Well, I believe you testified earlier that the dotted line represented in effect the westerly boundary of Edison San Bernardino Redlands district, did you not, schematically? A. Schematically, yes.

Q. And you have shown Hoover Chino on this map easterly of that broken line, have you not? A. Well, I have located it there, yes, more for convenience in showing the schematic.

Q. On the two maps in the Form 12 which I have just shown you, the location of Edison's Chino substation is westerly of the boundary of the San Bernardino Redlands district, is that not correct? A. I believe so, yes.

Q. Did I also correctly understand that in the preparation of this Exhibit 41 you used annual energy figures so that you could represent the overall year's time net effect of flow of energy? A. That is right.

Q. Directing your attention to the figure appearing farthest to the right on Exhibit 41 designated MWD Hayfield Highgrove, approximately 178 million kilowatt hours, there is an arrow pointing westward.

Did you find that figure? A. Yes.

Q. Is that supposed to represent the over-all year's

917

time net effect of flows, energy flows, at that point? A. I wouldn't be sure of that total figure. I used the figures given by the California Utility Commission. That was the only availability I had of those figures.

Q. I believe you heard Mr. Patterson testify that that figure represents the metered kilowatt hours received by Edison at Hayfield from MWD, is that correct? A. I don't remember his exact testimony on that, but I believe——

Q. I believe the record will verify that.

Would you accept, subject to check, that while the 178 million kilowatt hours represents the receip... by Edison from MWD at that point that during the same year, 1958, Edison delivered to MWD at that point 196 million 588 thousand 800 kilowatt hours?

Mr. Goldberg: May I have that question again, please?

Presiding Examiner: Will you read it please, Miss Reporter?

(The question, as recorded, was read by the reporter.)

Mr. Goldberg: Do you have anything you can show the witness?

Mr. Bury: No, unfortunately, those values are meter records located back in Los Angeles. If necessary, we can certainly furnish them to Mr. Sack as soon as we return and he can advise the Examiner if those figures are incorrect. I do

918

not happen to have them available today.

Mr. Goldberg: Mr. Examiner, we can't undertake that. Mr. Sack doesn't have——

Mr. Bury: I am sorry. I am sorry. Excuse me. Someone found it.

By Mr. Bury:

Q. Directing your attention again to Edison's Power System Statement Form 12 for the year 1958, directing your attention to Schedule 8, entitled "Other Energy Transfers with Electric Utility Systems," and to the column entitled, "Name of Other Company or System," dropping down to Metropolitan Water District, next column, transfer point Camino,—excuse me, the line below: the transfer point Highgrove, and turning over to the last column energy delivered, do you see the figure in kilowatt hours of 196 million 588 thousand 8 hundred? A. Yes, I see the figure.

Q. Looking at Exhibit 41, with the exception of the four small hydro plants, Santa Anna (sic), Mill Creek, Lytle Creek and Fontana, shown easterly of the dotted line and some or all of the Base Hydro shown to the west of the line, are all of those generating sources connected to Edison's 220 KV transmission system? A. I wouldn't be able to state that without referring to a system plan.

919

The smaller plants, I believe, some of them go into 12.

Q. I really stated perhaps the question in the negative manner. What I wanted to know was whether or not the source of Hayfield, Etiwanda, Big Creek, El Segundo, Redondo, Huntington Beach, Alemitos (sic) and Chino, all of those generating resources are connected to the Edison 220 KV network? A. I believe they are.

Q. I believe you testified yesterday that Edison's 220 KV network is tied together? A. That is right.

(919)

Q. Would you not agree that in order for energy from any of those sources to reach customers, it must pass through the 220 KV system before it can reach the 66 system and must pass through the 66 KV system before it can reach the distribution system? A. That is right.

Mr. Bury: That is all the questions I have.

Presiding Examiner: Mr. Cragun?

Mr. Goldberg: Just a moment, Mr. Examiner, if we may.

By Mr. Cragun:

Q. Mr. Sack, I show you a copy of the 1958 Power System Statement of Southern California Edison and ask if you can state what it shows respecting the load in Ontario and Pomona districts? A: We have 245 million here for Ontario. We have

920

245 million 468 thousand 960 kilowatt hours.

Mrs. Pajalich: Would you repeat that, I can't hear you, Mr. Sack.

The Witness: For the Ontario district we have 245 million 468 thousand 960 kilowatt hours.

For the Pomona district we have 245 million 273 thousand 989 hundred kilowatt hours.

By Mr. Cragun:

Q. Referring again to your Exhibit 41, if your line had been moved west to include those two westerly districts to which Mr. Bury referred, how greatly would that increase the figure in the lower right-hand corner which you deducted from the input shown? A. Well, roughly 600 million.

Q. That is the sum of the two figures which you just supplied from Edison's Form 12, is that correct? A. Well, in round numbers, yes.

Q. And would there still remain, then, a net generation going west as indicated by your arrow which would cross the line of the districts as moved further west? A. Well, it would reduce the 2 billion 71 million by the 600 million or leave you approximately one billion 400 million.

Q. All right, sir. Now, look at this from a different standpoint: suppose you eliminated from the calculation which

921

you have shown there the generation shown coming from Hoover Chino, how would that affect the net power flow to the west which you have indicated? A. It would reduce it by just under 1 billion kilowatt hours, 941 million.

Q. Would there still be a flow to the west? A I believe so.

Mrs. Pajalich: Are you through?

Mr. Cragun: Just a moment.

That is all.

By Mrs. Pajalich:

Q. Mr. Sack, would you look under the Power System Report for 1958 which I believe you still have before you?

Mr. Goldberg: No, he doesn't.

The Witness: No, I don't.

Mr. Bury: I take it you want the witness to look at the same page he just read those last figures from on the Ontario district?

Mrs. Pajalich: Yes.

Mr. Bury: Do you remember the page?

Mr. Goldberg: That was Schedule 17. I don't remember what page it is.

Page 18, I am told.

By Mrs. Pajalich:

Q. Now would you look to the line which shows the load into the Whittier district. A. Yes.

Q. How much does that show? A. Well, we read 744 million 635 thousand 402 kilowatt hours.

Q. Do you know whether the La Habra substation is in the Whittier district, Mr. Sack? A. I don't know.

Q. Mr. Sack, withdrawing the question relative to the Whittier district, would you look on the map in the FPC Report, page 28-B and directing your attention to the Fullerton district, do you see La Habra within the Fullerton district? A. Yes.

Q. Would you please turn back again to the Schedule 17 and looking on the line marked Fullerton, would you read us the load for the Fullerton district for the year 1958? A. 533 million 537 thousand 844.

Q. Now, subtracting that load from the approximately 941 million kilowatt hours to which your figures have last been reduced, would you give us the result?

Mr. Goldberg: I object to that, Mr. Examiner. No showing that the additional districts with which this question appears to be concerned may in any way be considered as part of the easterly division of the system.

Mrs. Pajalich: Mr. Examiner, this is to show that the

figures are inaccurate, not to be relied upon in Exhibit 41.

Mr. Goldberg: Counsel's characterizations simply do not meet my objections.

Mrs. Pajalich: Well, we can produce evidence, of course, to show the substation La Habra and the source from—that it is one of the substations served from the Hoover Chino source.

Mr. Goldberg: We would welcome that testimony if it can be adduced but let us not try to put that testimony in through this witness on assumptions that are not shown to have any foundation in the record.

Mrs. Pajalich: Mr. Examiner, in view of the witness' unfamiliarity with the distribution substations, I have no further questions relative to this exhibit.

Presiding Examiner: You are excused.

(Witness excused.)

Mr. Bury: Mr. Examiner, I think that I am correct that the next order of business ought to be to clean up certain exhibits which I believe were offered on which rulings have been reserved.

Presiding Examiner: According to my notes, Exhibit 26 offered by the California Commission, Exhibit 27 offered by the California Commission, 28 offered by the California Commission, 29 offered by the California Commission, and 30

offered by the California Commission have not yet been admitted.

Mrs. Pajalich: Yes, sir. I should like to offer them again.

Presiding Examiner: At this time, Exhibits 26, 27, 28, 29 and 30 will be admitted.

(The documents referred to, heretofore marked for identification as Exhibits Nos. 26, 27, 28, 29 and 30, were received in evidence.)

Mr. Cragun: Mr. Examiner, we remained silent on that because we had previously argued 29. It had been my understanding, for instance, that the Examiner had ruled that admissible, but we do continue with our objections with respect to the exhibits so that the record will show it was not with our implied consent.

Mr. Everett: Mr. Examiner, the Staff would like to have the record show that with respect to Exhibits 29 and

(924)
30 the Staff would like to have their objections noted to their receipt in evidence.

Presiding Examiner: The objections of the City of Colton and the Staff will be noted but Exhibits 29 and 30 are admitted.

Then we have Exhibits 31, 32, 33.

Mr. Bury: Those were the diagrams used to pose hypothetical questions to Dr. Sorensen.

925

Presiding Examiner: And 40.

Mr. Bury: Yes, and Exhibit 40 was the photographs.

Presiding Examiner: Of Edison?

Mr. Bury: Yes.

We offer those at this time.

Mr. Everett: Those are the three diagrams which you put on on your redirect of Dr. Sorensen?

Mr. Bury: That is correct.

Mr. Everett: And then the fourth exhibit is the exhibit you put in through Mr. Ashley containing the pictures?

Mr. Bury: Yes. That is Exhibit 40.

Mr. Everett: The staff has no objection to those exhibits, Mr. Examiner.

Presiding Examiner: At this time Exhibits 31, 32 and 33 and 40 will be admitted.

(The documents referred to, heretofore marked for identification as Exhibits Nos. 31, 32, 33 and 40, were received in evidence.)

Presiding Examiner: That leaves Exhibit 41 offered on behalf of the City of Colton.

Mrs. Pajalich: The California Commission would object to the receipt in evidence of Exhibit 41, Mr. Examiner, in view of the fact that this exhibit contains obvious errors which have been demonstrated by Mr. Sack's testimony.

Mr. Bury: Mr. Examiner, I believe also that the cross-

examination shows that it was not prepared on the basis on which he testified on direct, in accordance with the assumption he testified on direct he made in his preparation.

Presiding Examiner: Well, I think it is fairly well covered in the cross-examination and therefore for what weight it has, it will be admitted.

(The document referred to, heretofore marked for identification as Exhibit No. 41, was received in evidence.)

Mr. Goldberg: Mr. Examiner, lest my silence be in any way misconstrued, the characterizations by counsel are not in any way conceded by the City of Colton Counsel. They are utterly fallacious and no amount of invectives will alter the fact that the exhibit is a true representation of the figures used in the FPC 12 Report by the company and the fact that the districts shown as the eastern districts are appropriately shown as such by the witness and that all the efforts of the other side consisted of trying to draw into the east all of the west and thereby absorb the net flow going to the west, which couldn't in any way alter the conclusions.

Presiding Examiner: There was a motion day before yesterday by the California Commission to strike certain testimony concerning the delivery of out of state energy to other California cities or towns besides the City of Colton.

Mr. Goldberg: Mr. Examiner, I think you are referring to the questions which elicited the kilowatt hour sales

927

for the year 1958 to Riverside, Azusa and Anaheim.

Presiding Examiner: That came yesterday, and I ruled on that yesterday. The motion was before that time.

At any rate, so that the record will be clear, the issue here is whether or not out of state energy is sold to the City of Colton and not whether out of state energy is being sold by Edison to any other cities in the State of California.

Mr. Goldberg: Mr. Examiner, whatever was elicited—and I think it was through the witness Montgomery on cross-examination—as to the kilowatt hour sales to Riverside, Anaheim and Azusa, was simply in response to the contention raised by the California Commission and Edison on their theory of de minimis, that there was here a de minimis flow of out of state energy to the City of Colton and that, therefore, the Commission should refuse to exercise its jurisdiction in the premises. It was to that that the testimony was elicited, and I think the Examiner appreciates that we are not in accord with the opposition as to the correct interpretation of de minimis and the Connecticut Light & Power Company case.

Mrs. Pajalich: I will again urge my motion to strike, Mr. Examiner, on the grounds that any evidence with relation to the sales or re-sales to any California cities other than the City of Colton goes beyond the issues in this case.

Presiding Examiner: I think your motion is well taken,

928

that any evidence pertaining to sales—and I ruled on that yesterday in a specific question, but as to the general question, I think the motion is well taken.

Mr. Goldberg: Mr. Examiner, you have sustained the motion to strike?

Presiding Examiner: Yes.

Mr. Goldberg: This may be rather unusual but I would like to have the questions and the answers stand as an offer of proof.

Presiding Examiner: Very well, Mr. Goldberg.

Some transcript corrections have already been filed.

How long will it take you to prepare and file the transcript corrections? How much time do you want?

Mr. Bury: Well, let's see. We have already covered the first three volumes. Today is the tenth. We will have several more. Actually, I think we can—working time, my experience, is, it will only take about two days. I am thinking of traveling time and getting it back for filing, I would say a minimum of ten days. Today is a Tuesday. I would think my recommendation would be a week from this coming Monday.

Presiding Examiner: I was about to say that transcript corrections will be filed on or before May 23.

Mr. Bury: That is quite satisfactory with us.

Presiding Examiner: Which gives you the rest of this

929

week to prepare them and get them in the mail and be filed here with the Commission on the following Monday.

Mr. Goldberg: Mr. Examiner, how much time will we have following that to advise the Examiner whether we have any objections as to those that have already been submitted and those that are to be submitted? Will that be a week?

Presiding Examiner: I think the rule says ten days.

Mr. Goldberg: Is it ten days?

Presiding Examiner: Now, initial briefs. How much time will you want for those?

Mr. Everett?

Mr. Everett: May the Staff be heard on that, Mr. Examiner?

(929)

Presiding Examiner: Yes.

Mr. Everett: The Staff suggests that all the main briefs be filed simultaneously in this proceeding and that all the reply briefs be filed simultaneously. As to the main briefs, we would suggest they be filed some time during the week of June 26 and as to the reply briefs that they be filed some time during the week of July 17.

Mr. Bury: I haven't checked those days but they sound generally satisfactory and that method of briefing is satisfactory to us.

Mr. Goldberg: June 26 is a Sunday.

Mr. Everett: Excuse me. I said the week of June 26

930

and the week of July 17.

Mr. Goldberg: Oh, I am sorry.

Mr. Bury: This is going to be a lot of work, I can see that. I was going to suggest the Friday of that week. What would that be?

Mr. Everett: That would be July 1, Mr. Bury.

Mr. Bury: That is an easy date to remember. That would be satisfactory with me.

Mrs. Pajalich: That would be satisfactory with me, Mr. Examiner.

Mr. Goldberg: Yes.

Mr. Bury: July 1st and three weeks for briefs, which would be July 22nd.

Presiding Examiner: This Examiner is not going to be in position to start writing any decisions until August and then he hopes to have a little vacation perhaps.

Supposing that I fix the date for the main briefs on July 5. That will give you the fourth of July, if you want to work on it, and July 5 is the first date after that week-end when the Commission will be open to receive them.

Mr. Bury: That is fine. Briefs will be in the mail and I can enjoy that week-end.

Presiding Examiner: And that reply brief will be filed on or before August 1.

Mr. Bury: That is quite satisfactory with us.

931

Mrs. Pajalich: Satisfactory with us.

Mr. Everett: Yes.

Presiding Examiner: Anything further to come before us today?

If not, you have presented some interesting questions and I look forward to reading your briefs.

This hearing is closed.

(Whereupon, at 9:55 o'clock a.m., the hearing in the above entitled matter was concluded.)

# Table of Contents

| Document as Certified | Certified Transcript Page | Joint Appendix Page |
|---|---|---|
| Exhibit 1: Map showing the relative geographic locations of Hoover Dam, Davis Dam, and Parker Dam power plants, and of the Hayfield, Highgrove and Colton substations and the intervening transmission lines | 961 | 715 |
| Exhibit 2: A one-line diagram | 962 | 716 |
| Exhibit 3: Tabulation entitled, "Power Flow Data," prepared by the Bureau of Power, F. P. C. | 963 | 716-A |
| Exhibit 5: Agreement, dated October 1, 1945, between City of Colton and Southern California Edison Company, Ltd. | 1069-A | 717 |
| Exhibit 11: Cover page and seven sheets bearing title, "Southern California Edison Company, A. C. Network Calculator Studies of Portions of Edison, M.W.D., and U.S.B.R. Systems." Sheets 1, 3, 4, 5, 6, 7 | 1106 | 725-730 |
| Exhibit 12: Map bearing the legend, "Electric Power Systems of California and their Interconnections, Southern California Edison Company, No. 9108" | 1113 | 731 |
| Exhibit 13: Map entitled, "Southern California Edison Company, San Bernardino and Redlands Districts" | 1114 | 732 |
| Exhibit 15: Three page letter, dated December 1, 1959, on letterhead of the M.W.D. of Southern California, to W. E. Montgomery, Vice President, Southern California Edison Co., from Robert B. Diemer, General Manager and Chief Engineer | 1248 | 733 |
| Exhibit 16: Single sheet entitled, "Southern California Edison Company, 'Net Generation'; i.e., Kilowatt-Hours Transmitted Years 1954 through 1958" | 1251 | 736 |
| Exhibit 17: Letter dated November 20, 1959, from Nevada Public Service Commission to Southern California Edison Co., consisting of two pages signed, Public Service Commission of Nevada—J. G. Allard, Chairman | 1252 | 737 |

| Document as Certified | Certified Transcript Page | Joint Appendix Page |
|---|---|---|
| Exhibit 18: Letter dated November 24, 1959, from Arizona Corp. Commission to Southern California Edison Co., consisting of one page, signed by Arizona Corp. Commission—S. C. Corbitt, Director, Utilities Division | 1254 | 739 |
| Exhibit 21: Document bound in green cover, captioned, "Southern California Edison Company, Decision No. 50449 (August 17, 1954) before the Public Utilities Commission of the State of California." (In part) | 1265 | 740 |
| Exhibit 24: Document captioned: Copy Before the Public Utilities Commission of the State of California, in the Matter of the Application of Southern California Edison Company, etc., Application No. 33952 Reporter's Statement, under date of May 3, 1954, consisting of cover page and two pages, the second of which is headed, "Excerpts from oral argument of John W. Holmes, counsel for the City of Colton, and others", commencing at 7924 | 1485 | 745 |
| Exhibit 25: Document bearing notation in upper-hand corner, "Application No. 38382, Exhibit No. 53, Witness C. A. Winder, date, June 13, 1957," prepared on behalf of the City of Colton, California and Others, and received in evidence at Edison's second rate proceeding before the California Commission in 1957. (In part) | 1488 | 748 |
| Exhibit 26: Map of Southern California Edison Co., 220 kv Transmission System and Major Production Facilities serving San Bernardino Area | 1531 | 752 |
| Exhibit 27: Schematic Diagram of Southern California Edison Co., 66 kv Transmission System and Substations Pertinent to Serving Colton Area | 1532 | 753 |
| Exhibit 29: Southern California Edison Co., Energy Source Chart as Related to Serving City of Colton, Year 1958 | 1534 | 754 |

| Document as Certified | Certified Transcript Page | Joint Appendix Page |
|---|---|---|
| Exhibit 30: Tabulation and Brief Summary of References to California Public Utility Commission regulation of Southern California Edison Company's sales of electricity to City of Colton ............ | 1535 | 755 |
| Exhibit 31: Loads 1 and 2—L-1 and L-2 and two sources S-1 and S-2 ....................... | 1539 | 758 |
| Exhibit 32: Blank diagram .................. | 1540 | 759 |
| Exhibit 33: Diagram ........................ | 1541 | 760 |
| Item R: Letter dated November 2, 1953, addressed to Bruce Renwick, Esq. signed by Leon M. Fuquay | 1651 | 761 |
| Item S: Six letters in the Edison correspondence file, part one, dated August 31, 1953, September 4, 1953, September 17, 1953. Letter of November 2, 1953 previously identified as Item R, and a letter of February 17, 1954 and letter dated March 24, 1954, addressed to Mr. Leon M. Fuquay ............ | 1653 | 763 |
| Colton, Petition for an Order, E-6821, received May 9, 1958 .............................. | 1674 | 794 |
| Answer of Southern California Edison Co., E-6821, received June 9, 1958 ...................... | 1685 | 799 |
| Edison, Motion to Dismiss, E-6821, received December 2, 1959. (Less exhibits) .................. | 1709 | 807 |
| Public Utilities Commission of the State of California, Motion to Dismiss, E-6821, received December 7, 1959 .............................. | 1744 | 833 |
| Opinion No. 346, Opinion and Order Determining Jurisdiction, E-6821, issued July 31, 1961 ......... | 1917 | 837 |
| Petition of Southern California Edison Co. for Rehearing, E-6821, received August 21, 1961......... | 1945 | 870 |
| Petition of Public Utilities Commission for Rehearing and for Order Staying or Extending Time, E-6821, received August 22, 1961 ................... | 1967 | 886 |
| Order Denying Rehearing and Granting Stay, E-6821, issued September 14, 1961 .................... | 1978 | 892 |

961

EXHIBIT NO. 1

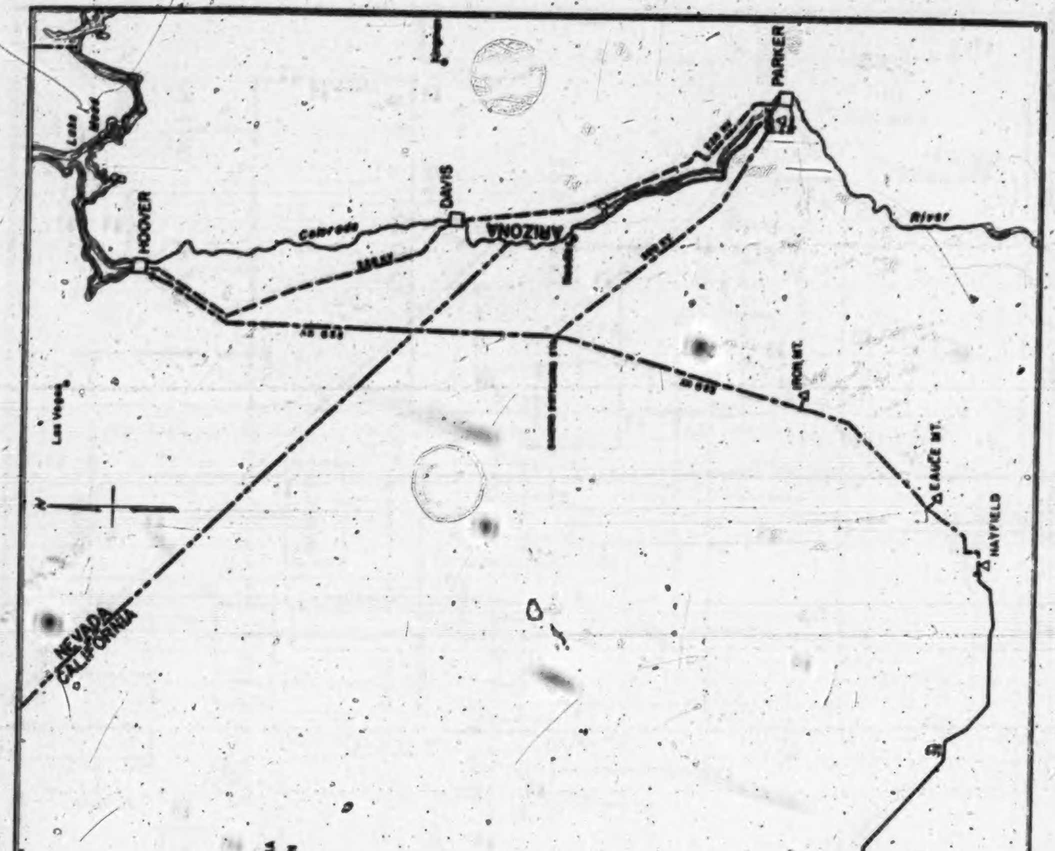
MAP
DOCKET NO. E-6821
LEGEND
SOUTHERN CALIFORNIA EDISON COMPANY
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
U. S. DEPARTMENT OF INTERIOR, BUREAU OF RECLAMATION
HYDRO ELECTRIC PLANT
SUBSTATION
INTERCONNECTION BETWEEN COMPANIES
SCALE IN MILES
Lake Mead
HOOVER
Colorado
DAVIS
ARIZONA
PARKER
River
Las Vegas
N
NEVADA
CALIFORNIA
IRON MT.
EAGLE MT.
HAYFIELD
220 KV
Palm Springs
San Bernardino
CITY OF COLTON
COLTON
HIGHGROVE
CHINO
Santa Ana
Los Angeles
Pacific
Ocean

**EXHIBIT 1:** Map showing the relative geographic locations of Hoover Dam, Davis Dam, and Parker Dam Power Plants, and of the Hayfield, Highgrove and Colton Substations and the intervening transmission lines.

962

EXHIBIT NO. 2
FPC
6-6-61

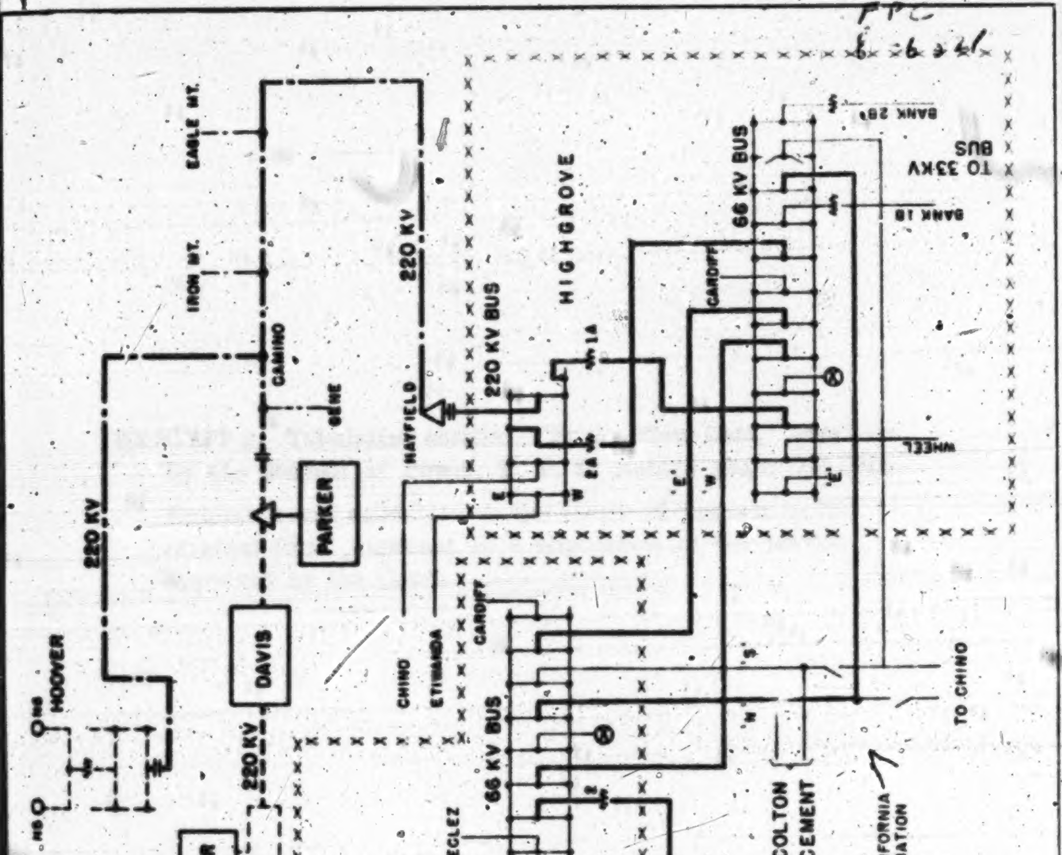
CITY OF COLTON SUBSTATION
HOOVER
NO. 5
NO. 6
220 KV
HOOVER
DAVIS
220 KV
PARKER
EAGLE MT.
IRON MT.
CAMINO
GENE
HAYFIELD
220 KV
220 KV BUS
HIGHGROVE
COLTON
CHINO
ETIWANDA
CARDIFF
66 KV BUS
DECLEZ
66 KV BUS
CARDIFF
1A
2A
E
W
BANK 2B
BANK 1B
TO 33KV BUS
WHEEL
DOMEC
CACTUS
GLOBE MILLS
BEMIS
STA. PWR.
DERBY
LOMA LINDA
COOLEY
NANSA
11 KV BUS
COLTON CEMENT
TO CHINO
DIAGRAM
DOCKET NO. E-6821
LEGEND
SOUTHERN CALIFORNIA EDISON CO.
METROPOLITAN WATER DISTRICT OF SO. CALIFORNIA
U.S. DEPT. OF INTERIOR, BUREAU OF RECLAMATION
SUBSTATION
TRANSFORMER BANK
GENERATOR
SYN. CON.
CHANGE OF OWNERSHIP
SUBSTATION BOUNDARY

EXHIBIT 2: A one-line diagram.

**EXHIBIT 3:** Tabulation entitled, "Power Flow Data," prepared by the Bureau of Power, F. P. C. Record pages 963-1068.

Exhibit 3 was submitted to the Court of Appeals in its original form, pursuant to a stipulation of the parties approved by the Court.

**EXHIBIT 5: Agreement, dated October 1, 1945, between City of Colton and Southern California Edison Company, Ltd.**

1069A

## AGREEMENT

THIS AGREEMENT, made and entered into this *1st* day of October, 1945, by and between the CITY OF COLTON, a municipal corporation within the State of California, hereinafter referred to as the "City", and SOUTHERN CALIFORNIA EDISON COMPANY, LTD., a corporation organized and existing under the laws of the State of California, hereinafter referred to as the "Company",

WITNESSETH:

WHEREAS, the parties hereto under contract dated the 6th day of October, 1941, agreed that the Company would furnish electrical energy to the City at wholesale for a period of ten (10) years from and after the 6th day of October, 1941; and

WHEREAS, the parties hereto desire to terminate said agreement and substitute this agreement in lieu thereof;

NOW, THEREFORE, it is agreed between the parties in consideration of the mutual covenants and agreements hereinafter contained, as follows:

1. That said agreement dated the 6th day of October, 1941, is hereby terminated as of the date of this agreement.
2. The City agrees for a period of ten (10) years from the date hereof it will purchase all of its electrical requirements from the Company in accordance with the following rate schedule:

## 1070

### Demand Charge:

| | |
|---|---|
| First 200 KW of maximum demand (But not less than $250 per month) | $1.25 per KW per month |
| Next 300 KW of maximum demand | 1.05 per KW per month |
| Next 2,500 KW of maximum demand | 0.85 per KW per month |
| Next 3,000 KW of maximum demand | 0.80 per KW per month |
| The balance of KW of maximum demand | 0.75 per KW per month |

### Plus Energy Charge:

| | |
|---|---|
| First 200,000 KWH per month | 0.75¢ per KWH |
| Next 300,000 KWH per month | 0.66¢ per KWH |
| Over 500,000 KWH per month | 0.62¢ per KWH |
| Except that all kilowatt-hour use in excess of 400 kilowatt hours per kilowatt of demand, at | 0.55¢ per KWH |

## MINIMUM CHARGE

The minimum charge shall be the demand charge.

## SPECIAL CONDITIONS

(a) Service under this schedule will be supplied by the Company at the standard nominal voltage of 2400 or over, as requested by the consumer. Transforming equipment, if required will be owned and installed by the Company and maintained at its expense.

(b) The maximum demand in any month upon which the demand and energy charges will be based will be the average kilowatt delivery in the 30-minute interval in which the consumption of electric energy is greater than in any other 30-minute interval in the month, but shall not be less than 70% of the maximum demand occurring during the eleven months preceding. Any demand occurring between the hours of 11 P.M. and 6 A.M. of the following day will not be considered when computing charges under this schedule.

## POWER FACTOR CLAUSE

Where the KWH consumed in any month exceeds the lagging reactive kilowatt ampere hours (referred to herein as R-KVAH), used in that month, a credit allowance will be made on such excess KWH at the rate of eight-tenths (0.8) of a mill per KWH. Where the R-KVAH used in any month exceed the KWH used in that month, a charge will be made for such excess R-KVAH at the rate of eight-tenths (0.8) of a mill per R-KVAH.

The credit allowance for power factor in any month shall not exceed ten per cent (10%) of the total bill for that month before reduced by power factor discount. The charge for power factor in any month shall not be more than ten per cent (10%) of the total bill for that month before increased by the charge for power factor. A ratchet device will be installed on the R-KVAH meter to prevent its reverse operation on leading power factors.

It is agreed that if during the term of this contract the Company shall have in effect a schedule applicable to municipalities operating under similar conditions as the City, which schedule establishes a lower rate than the rate provided for herein, then the City may at its option select such new and lower rate and be billed in accordance therewith.

This agreement shall continue for a period of ten (10) years from date hereof, and shall automatically continue

(1071)

from month to month thereafter until terminated by either party by written notice served on the other party.

The Company agrees to maintain meters for measuring consumption of electrical energy, which meters shall at all times be open to inspection by a proper representative of the City, and to checking by the City as to accuracy at all reasonable times.

The Company agrees to keep an accurate account of all electrical energy and service furnished to the City and

1072

to bill the City monthly therefor, and the City does hereby agree to pay for said electrical energy and service furnished to it by the Company at said prices as above fixed, the payment thereof to be made on or before the 20th day of each month for the preceding month.

The City agrees that the electrical energy furnished by the Company under this contract shall be sold and distributed only within the city limits of the City of Colton, as the same now exist or may be enlarged by annexation, or otherwise, except that the City may continue to serve those certain territories within the County of San Bernardino, particularly described as follows:

1. That territory west of the City Limits of Colton.

   From the present city limits on the west beginning at Rancho Ave., west on the north boundary line of the Southern Pacific Railroad, to a point on the north side of the Southern Pacific Railroad, where Kelly Lane if extended south would intercept the Southern Pacific Railroad, then north along Kelly Lane to a point 150′ north of C Street, then east to a point 150′ west of Rancho Ave., then north paralleling Rancho Ave. to a point 150′ north of the center line of Mill Street, extended westerly, then east to the center of

Rancho Ave. and then south 150′ to the present city limits at Mill Street and Rancho Ave.

2. That territory south of the City Limits of Colton.

From a point 200′ south of the center line of Congress Street and the western rear property line on Florez Street, west 200′ south of Congress Street to the alley along the western line of tract number 2117, then south 250′, then west 200′ to rear of property line on alley, then north 250′, then west 200′ south of Congress Street to State Highway No. 43, thence southwesterly along State Highway No. 43 to a point 450′ south of Congress Street, thence due west to Agua Mansa Road, then northeasterly along Agua Mansa Road to the present city limits at Fifth and Congress Streets.

### 1073

3. Lots 33 to 49, inclusive, of Eleanor Park located along Sperry Drive.

4. Lots 10 to 16, inclusive, of Nancy Jane Subdivision located on Shasta Drive.

5. That portion of Block A of Tract 1 as recorded in Map Book 19, page 67.

Beginning at a point which is the intersection of easterly line of Mt. Vernon Avenue to the northerly line of Laurel Avenue; thence northerly along said easterly line of Mt. Vernon Avenue to the southwesterly corner of Lot 13 of said Block A; thence easterly along the southerly line of Lot 13 to the southeasterly corner of said line; thence southerly along the easterly line of said Block A to the northerly line of Laurel Avenue; thence westerly along the northerly line of Laurel Avenue to the beginning.

The above described county territories are now being served by the City.

It is further agreed that the Company may continue to serve those consumers within the city limits of Colton as it shall be serving at the date of this contract, and such, and only such, additional consumers within the city limits as the City shall request the Company in writing to serve; provided that such consumers can be supplied with electrical service in accordance with the rules, rates and regulations of the Company from the lines of the Company established at the time of said request or requests.

In the event of the annexation to the City of Colton of territory at present outside the city, and in which the Company shall be serving consumers at the time of such annexation, the City shall have the right to purchase at fair and

1074

just compensation any of the service lines of the Company in such annexed territory, other than transmission lines used to serve territory outside such annexation, upon giving notice to the Company of its desire to purchase the same. In the event the parties hereto are unable to agree upon a fair and reasonable price for such service lines, the same shall be determined by a condemnation case filed by the City in the Superior Court of San Bernardino County, or by application to the Railroad Commission of the State of California to fix a fair and reasonable price for such property under the terms of the Public Utilities Act of the State of California.

This contract shall at all times be subject to such changes or modifications by the Railroad Commission of the State of California as said Railroad Commission may from time to time direct in the exercise of its jurisdiction.

This contract shall be filed with said Railroad Commission, and, except as herein otherwise expressly provided, the Rules and Regulations of the Company on file from time to time with the said Railroad Commission shall be controlling so far as applicable to the subject matter of this contract.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

CITY OF COLTON

By /s/ ______________________

Mayor

Attest: /s/ ______________________

City Clerk

SOUTHERN CALIFORNIA EDISON COMPANY LTD.

By /s/ ______________________

Vice President

Attest: /s/ ______________________

Secretary

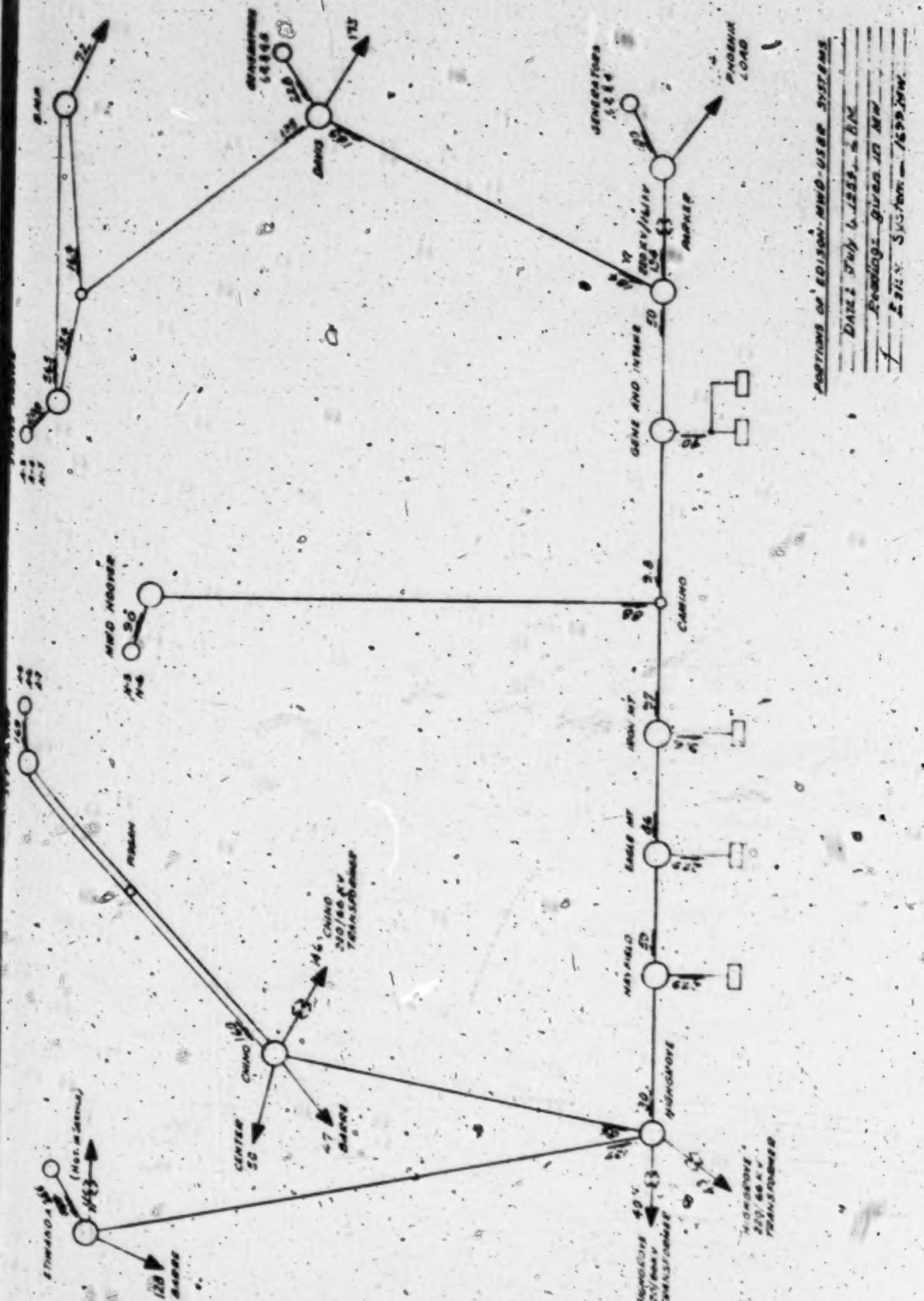
PORTIONS OF EDISON-MWD-USBR SYSTEMS
DAILY July 6, 1954 - 5 P.M.
Readings given in MW
Edison System — 1699 MW
DAVIS
PARKER
GENERATORS
PHOENIX LOAD
GENE AND INTAKE
CAMINO
MWD HOOVER
IRON MT
EAGLE MT
HAYFIELD
HIGHGROVE
CHINO
CHINO 220/66 KV TRANSFORMER
HIGHGROVE 220/66 KV TRANSFORMER
PISGAH
ETIWANDA
CENTER
BARRE

EXHIBIT 11: Cover page and seven sheets bearing title, "Southern California Edison Company, A. C. Network Calculator Studies of Portions of Edison, M.W.D., and U.S.B.R. Systems." Sheet 1.

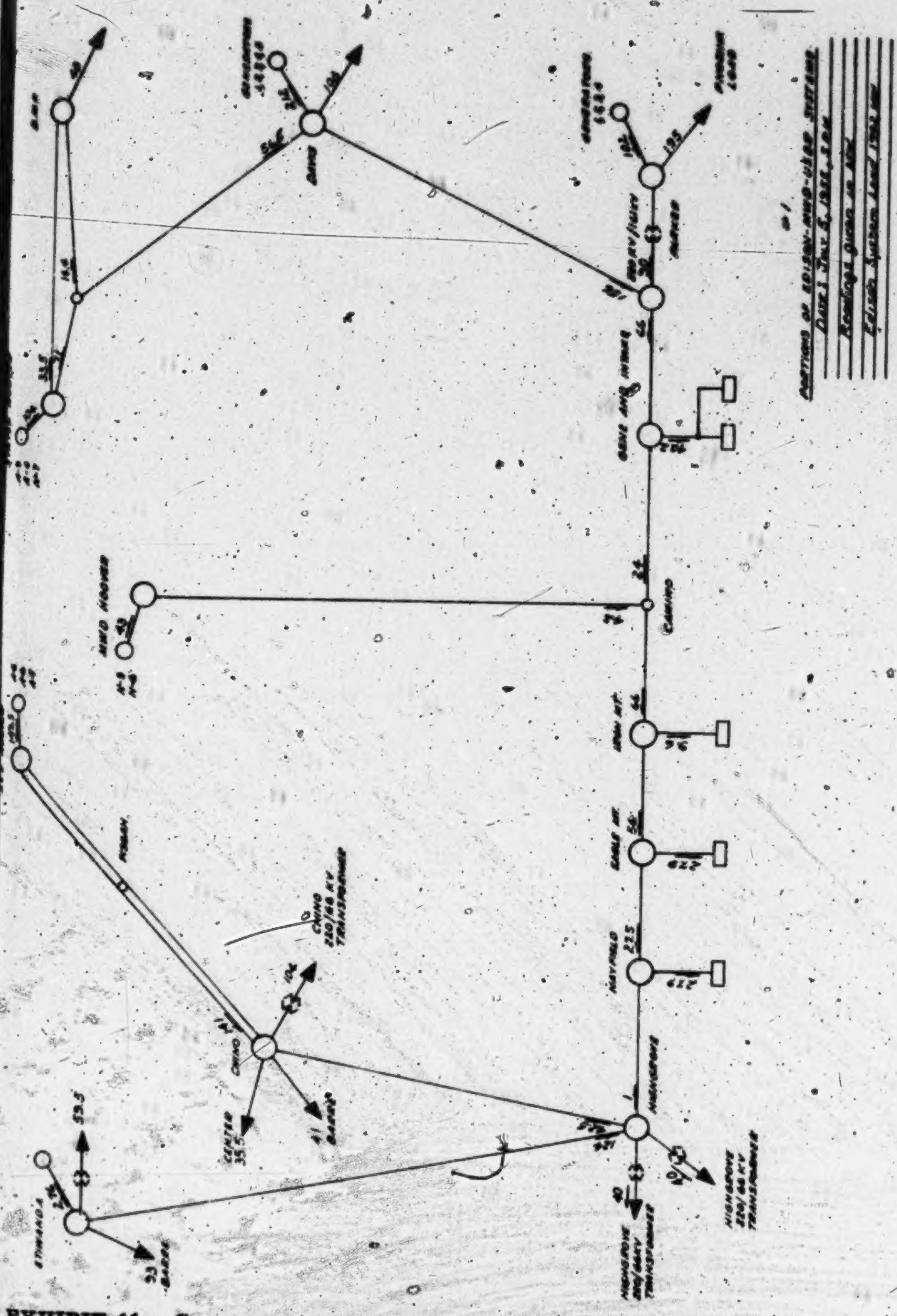
PORTIONS OF EDISON-MWD-USBR SYSTEMS
CHINO
HIGHGROVE
HAYFIELD
EAGLE MT.
IRON MT.
CAMINO
MWD HOOVER
GENE
PARKER
DAVIS

**EXHIBIT 11:** Cover page and seven sheets bearing title, "Southern California Edison Company, A. C. Network Calculator Studies of Portions of Edison, M.W.D., and U.S.B.R. Systems." Sheet 3.

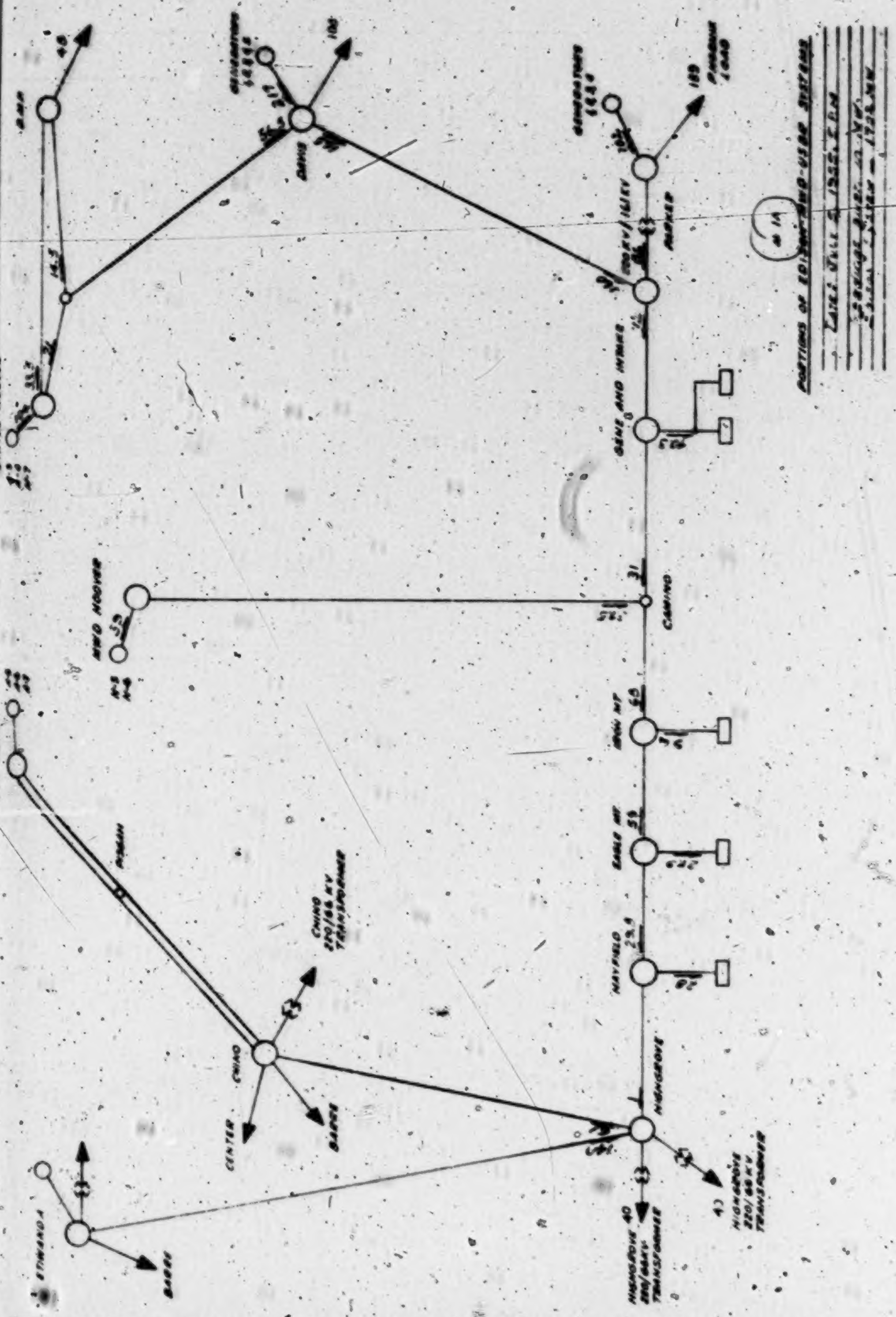
ETIWANDA
BARRE
PISGAH
CENTER
CHINO
BARRE
CHINO 220/66 KV TRANSFORMER
MWD HOOVER
BMP
48
GENERATORS
DAVIS
217
108
HIGHGROVE 40 220/66KV TRANSFORMER
43 HIGHGROVE 220/66 KV TRANSFORMER
HIGHGROVE
HAYFIELD
29.4
EAGLE MT
59
IRON MT
65
CAMINO
31
GENE AND INTAKE
PARKER
GENERATORS
189
PHOENIX LOAD
14.5
33.7
PORTIONS OF EDISON-MWD-USBR SYSTEMS

**EXHIBIT 11:** Cover page and seven sheets bearing title, "Southern California Edison Company, A. C. Network Calculator Studies of Portions of Edison, M.W.D., and U.S.B.R. Systems." Sheet 4.

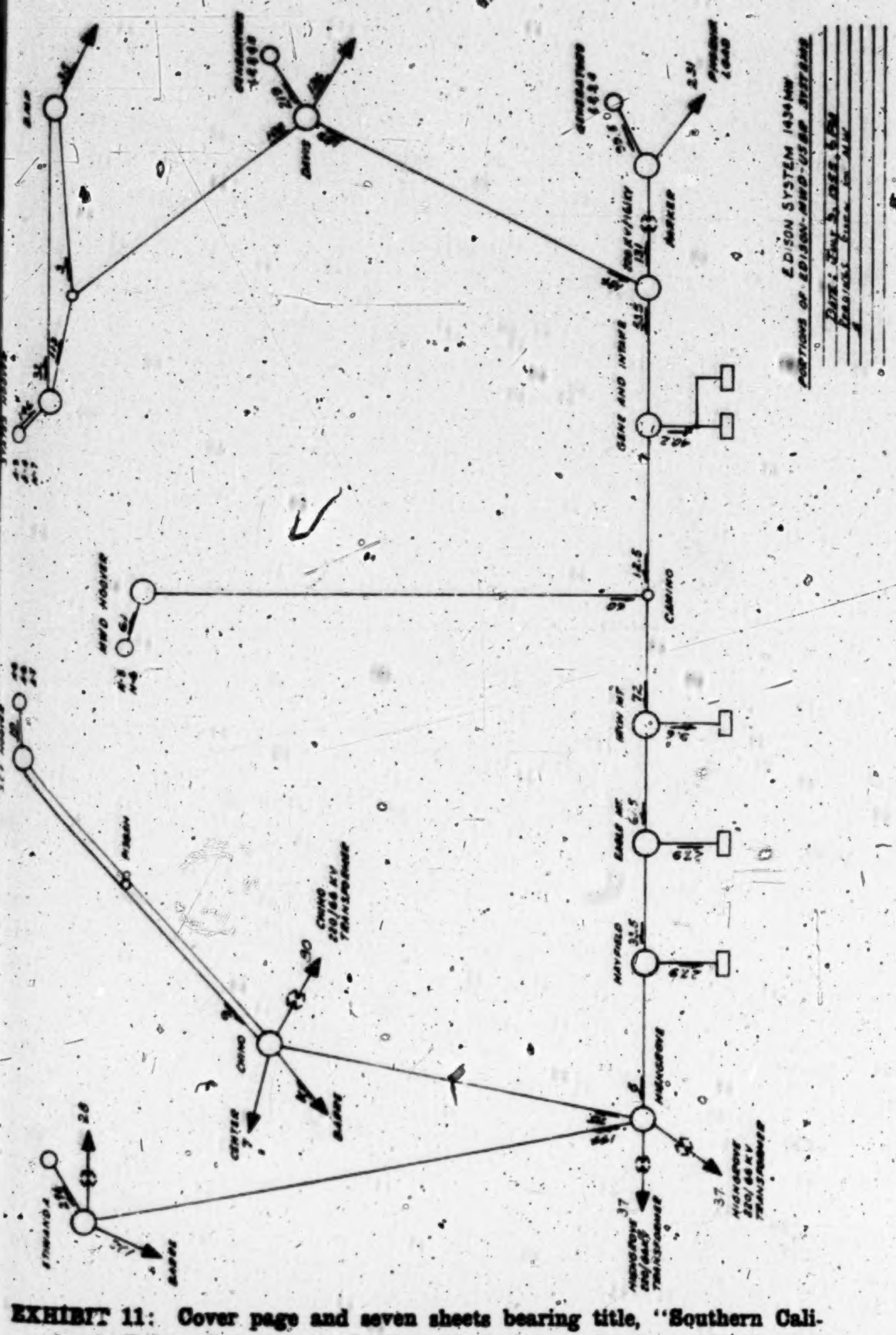
EDISON SYSTEM 1434MW
PORTIONS OF EDISON-MWD-USBR SYSTEMS
PARKER
GENERATORS
PHOENIX LOAD
DAVIS
GENE AND INTAKE
CAMINO
MWD HOOVER
IRON MT
EAGLE MT
HAYFIELD
HIGHGROVE
HIGHGROVE 220/66 KV TRANSFORMER
CHINO
CHINO 220/66 KV TRANSFORMER
CENTER
BARRE
12.5
72
37
2.31

**EXHIBIT 11:** Cover page and seven sheets bearing title, "Southern California Edison Company, A. C. Network Calculator Studies of Portions of Edison, M.W.D., and U.S.B.R. Systems." Sheet 5.

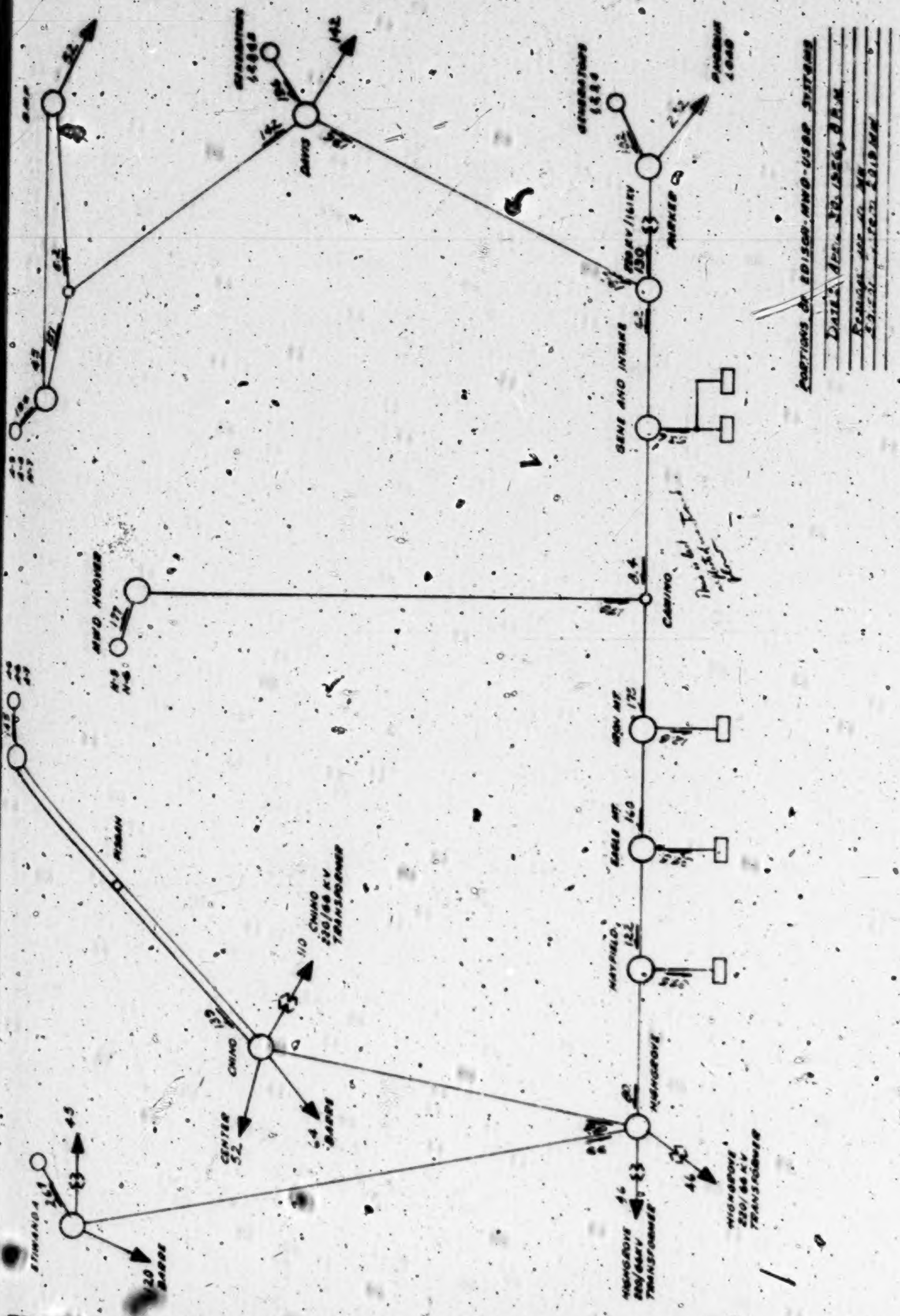
PORTIONS OF EDISON-MWD-USBR SYSTEMS
DAVIS
PARKER
GENE AND INTAKE
CAMINO
MWD HOOVER
IRON MT
EAGLE MT
HAYFIELD
HIGHGROVE
CHINO
ETIWANDA
PISGAH
CHINO 220/66 KV TRANSFORMER
HIGHGROVE 220/66 KV TRANSFORMER
CENTER
BARRE
GENERATORS
PHOENIX LOAD

**EXHIBIT 11:** Cover page and seven sheets bearing title, "Southern California Edison Company, A. C. Network Calculator Studies of Portions of Edison, M.W.D., and U.S.B.R. Systems." Sheet 6.

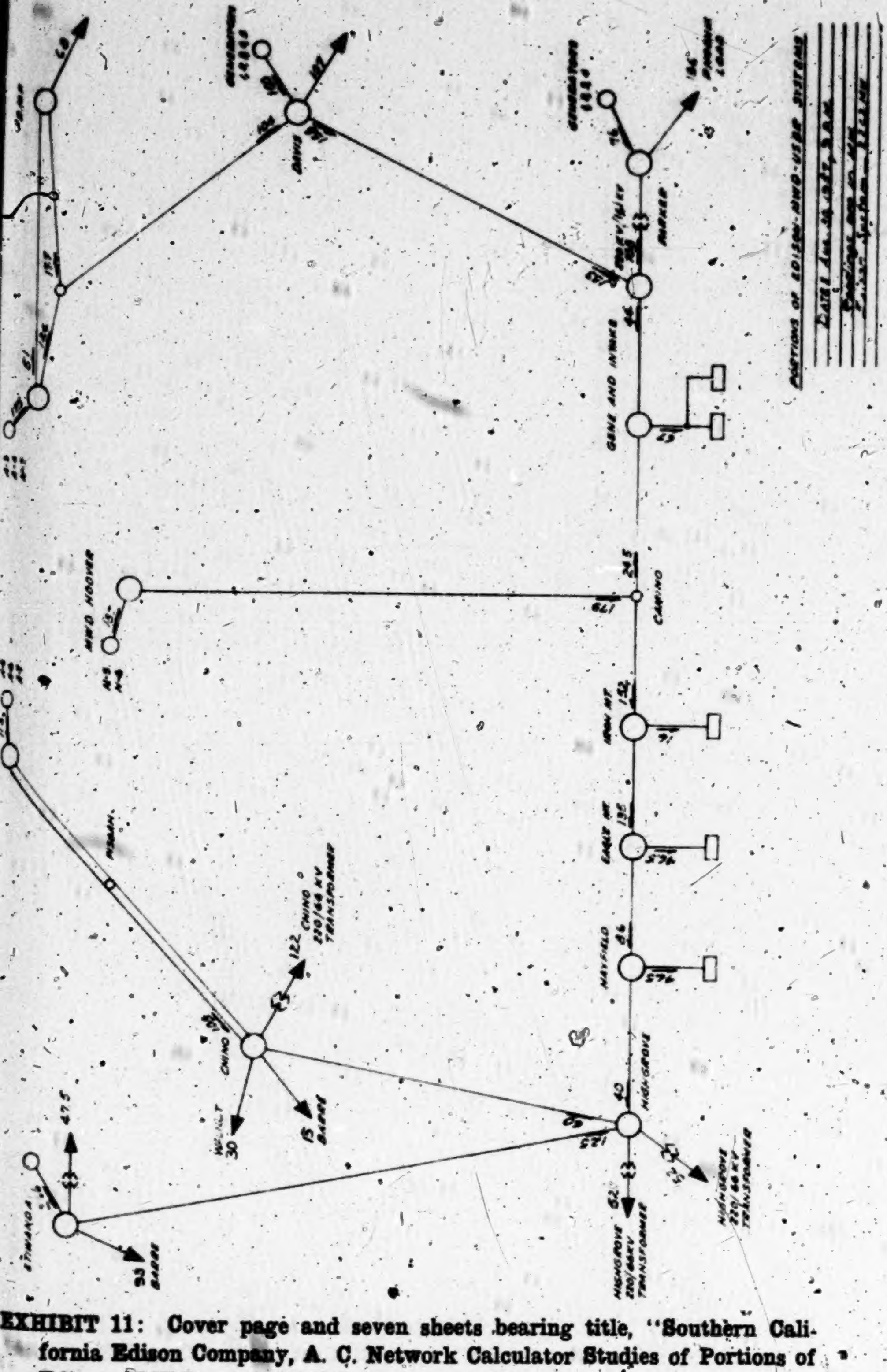
PORTIONS OF EDISON-MWD-USBR SYSTEMS
GENERATORS
PHOENIX LOAD
PARKER
GENE AND INTAKE
DAVIS
MWD HOOVER
CAMINO
IRON MT
EAGLE MT
HAYFIELD
HIGHGROVE
HIGHGROVE 220/66 KV TRANSFORMER
CHINO
CHINO 220/66 KV TRANSFORMER
BARRE
PISGAH
ETIWANDA
47.5
122
30
15
40
24.5
86
23

EXHIBIT 11: Cover page and seven sheets bearing title, "Southern California Edison Company, A. C. Network Calculator Studies of Portions of Edison, M.W.D., and U.S.B.R. Systems." Sheet 7.

MARGINAL MAP SHOWING TRANSMISSION LINES IN THE SAN FRANCISCO BAY AREA
MARGINAL MAP SHOWING TRANSMISSION LINES OF SOUTHERN CALIFORNIA EDISON COMPANY IN LOS ANGELES, SAN BERNARDINO, RIVERSIDE & ORANGE COUNTIES
WITHIN THIS AREA SEE MARGINAL MAP
Lake Mead
ARIZONA
MEXICO
Salton Sea
SANTA ROSA I.
SANTA CRUZ I.
CATALINA I.
MANDALAY
EL SEGUNDO
LONG BEACH
HUNTINGTON BEACH
SAN JUAN CAPISTRANO
Scale In Miles

# ELECTRIC POWER SYSTEMS OF CALIFORNIA

AND

Their Interconnections

Scale in miles

SOUTHERN CALIFORNIA EDISON COMPANY

LOS ANGELES CALIFORNIA

**LEGEND**

- ▫ Hydro Electric Plant.
- ⊏ Fuel Electric Plant.
- ○ Sub Station.
- ━ Transmission Voltage 220,000 Volts or Greater
- ─ Transmission Voltage Under 220,000 Volts.
- ─╫─ Point of Interconnection.

RESTRICTED USE ONLY

1113

E-6821

Exhibit 12

9108

SOUTHERN CALIFORNIA EDISON COMPANY
SAN BERNARDINO AND
REDLANDS DISTRICTS

11KV SERVICE AREA-COLTON SUB
SINGLE BLADE DISC AIR BREAK SWITCH
AUTOMATIC RECLOSER SWITCH
AUTOMATIC SECTIONALIZER SWITCH
GANG OPERATED AIR BREAK SWITCH
220 KV LINE
66 KV LINE
33 KV LINE
12 KV LINE
DISTRICT BOUNDARY
INDUCTIVE COORD. PARALLEL
OIL SWITCH
DISTRIBUTION SUB
POLE TOP SUB
CAPACITORS
PRI. SEC. SER.
SEE SAN BERNARDINO ARROWHEAD AREA MAP FOR AREA NORTH
LYTLE CREEK HYDRO PLANT
FONTANA HYDRO PLANT
ONTARIO DISTRICT
ETIWANDA STEAM
BLOOMINGTON SUB
COLTON SUB
HIGHGROVE SUB
CITY CREEK
S.A.R.1
S.A.R.2
S.A.R.3
M.C.1
M.C.2-3
MILL CREEK POWER HOUSE
OAK GLEN
CRAFTON SUB
RUGGLES P.T.
SAN BERNARDINO COUNTY
RIVERSIDE COUNTY
PEDLEY SUB
ONTARIO DISTRICT
CALIMESA
APPLE VALLEY P.T.
BEAUMONT SUB
MT. DAVID P.T.
SCALE IN MILES

(1252)

We understand that certain information with regard to your company's operation in Nevada must be presented during the hearing set for December 8, 1959 in Washington, D. C.

This is to advise that the Southern California Edison Company does not at present, nor has it in the past, operated as a public utility in the State of Nevada. It has not sought authorization from this Commission to operate as a public

1253

utility, nor has it applied for or obtained any certificate of public convenience and necessity; therefore, it has no schedule of rates on file with this Commission.

Very truly yours,
PUBLIC SERVICE COMMISSION
OF NEVADA
/s/ J. G. ALLARD
J. G. ALLARD
Chairman

JGA:NI

**EXHIBIT 15: Three page letter, dated December 1, 1959, on letterhead of the MWD of Southern California, to W. E. Montgomery, Vice President, Southern California Edison Co., from Robert B. Diener, General Manager and Chief Engineer.**

1248

THE METROPOLITAN WATER DISTRICT
of Southern California
300 West Third Street
Los Angeles 13, California

Office of
General Manager and Chief Engineer

Dec 1 1959

Mr. W. E. Montgomery
Vice President
Southern California Edison Company
P. O. Box 351
Los Angeles 53, California

Dear Mr. Montgomery:

This letter is in answer to a request by Mr. John Bury of your company for the District's connected load beginning with the calendar year 1954 and ending with the calendar year 1958. It is understood that Mr. Bury's request for load data will be used in connection with your Colton Case.

The District's pumping system, consisting of five pumping plants, was initially placed in operation in the year 1939 with three pumping units at each plant, designated as Units 1, 2 and 3. Two additional pumping units, designated Units 4 and 5, were added to each plant during the year 1956 and another pumping unit, designated Unit 6, was added to each plant during the years 1958 and 1959. Units 7, 8 and 9 will bring the pumping installation to its full output, and these units will be ready for operation at the end of the present calendar year 1959.

**EXHIBIT 18: Letter dated November 24, 1959, from Arizona Corp. Commission to Southern California Edison Co., consisting of one page, signed by Arizona Corp. Commission—S. C. Corbitt, Director, Utilities Division.**

RECEIVED Nov 25 1959
Law Department

ARIZONA CORPORATION COMMISSION
Utilities Department
The Capitol
Phoenix

November 24, 1959

Southern California Edison Company
Edison Building
P. O. Box 351
Los Angeles 53, California

Attention of John R. Bury
Assistant Counsel

Gentlemen:

You are advised that according to our records there is not a certificate of convenience and necessity issued to Southern California Edison Company authorizing such Company to operate as a public utility in the State of Arizona. We further find that there are no rates on file with this Commission for Southern California Edison Company, nor has it applied for for (sic) a certificate of convenience and necessity. According to our records, this Company does not operate in the State of Arizona as a public utility, and therefore, this Commission has no jurisdiction over Southern California Edison Company at this time.

Very truly yours,
ARIZONA CORPORATION COMMISSION
/s/ S. C. CORBITT, Director
S. C. CORBITT, Director
Utilities Division

(1248)

The dates that pumping units were placed in operation during the period from 1954 through 1958 and the number of units ready for operation during this period are listed with the rating of each unit in kilowatts, as follows:

1. Intake connected load through 1958:

| Unit | Operational Date | Connected Load-Kw |
|---|---|---|
| 1 | November 1, 1938 | 6,700 |
| 2 | November 1, 1938 | 6,700 |
| 3 | November 1, 1938 | 6,700 |
| 4 | February 26, 1956 | 6,700 |
| 5 | February 26, 1956 | 6,700 |
| 6 | May 6, 1958 | 6,700 |
| | Total | 40,200 |

1249

2. Gene connected load through 1958:

| Unit | Operational Date | Connected Load-Kw |
|---|---|---|
| 1 | January 25, 1939 | 6,700 |
| 2 | January 25, 1939 | 6,700 |
| 3 | January 25, 1939 | 6,700 |
| 4 | March 24, 1956 | 6,700 |
| 5 | March 29, 1956 | 6,700 |
| 6 | January 14, 1959 | 6,700 |
| | Total | 40,200 |

3. Iron Mountain connected load through 1958:

| Unit | Operational Date | Connected Load-Kw |
|---|---|---|
| 1 | April 5, 1939 | 3,200 |
| 2 | April 5, 1939 | 3,200 |
| 3 | April 5, 1939 | 3,200 |
| 4 | June 15, 1956 | 3,200 |
| 5 | July 1, 1956 | 3,200 |
| 6 | July 9, 1958 | 3,200 |
| | Total | 19,200 |

**EXHIBIT 21: Document bound in green cover, captioned, "Southern California Edison Company, Decision No. 50449 (August 17, 1954) before the Public Utilities Commission of the State of California."**

1265

Decision No. 50449

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHERN CALIFORNIA EDISON COMPANY
for an Order of the Public Utilities
Commission of the State of California
authorizing Applicant to increase rates
charged by it for electric service.

Application
No. 33952

Appearances and list of witnesses
are set forth in Appendix C.

## OPINION

Southern California Edison Company, a California corporation, hereinafter referred to as applicant, filed the above-entitled application on December 16, 1952 for authority to raise electric rates designed to increase gross annual revenues by approximately $16,000,000 or 12.6 per cent at its 1952 level of sales under average rate year conditions. Because of growth such requested increase would be equivalent to $17,452,000 for 1953 and $18,627,000 for 1954. This application is Edison's first general rate increase request in over 30 years, the last one being granted in 1921.

RECEIVED

### *Nature of Business*

Applicant is engaged in the business of generating, transmitting, and distributing electric energy in portions of central and southern California in the Counties of

4. Eagle Mountain connected load through 1958:

| Unit | Operational Date | Connected Load-Kw |
|---|---|---|
| 1 | April 10, 1939 | 9,300 |
| 2 | April 10, 1939 | 9,300 |
| 3 | April 10, 1939 | 9,300 |
| 4 | September 15, 1956 | 9,300 |
| 5 | August 15, 1956 | 9,300 |
| 6 | November 10, 1958 | 9,300 |
| | Total | 55,800 |

5. Hayfield connected load through 1958:

| Unit | Operational Date | Connected Load-Kw |
|---|---|---|
| 1 | July 25, 1939 | 9,300 |
| 2 | July 25, 1939 | 9,300 |
| 3 | July 25, 1939 | 9,300 |
| 4 | August 15, 1956 | 9,300 |
| 5 | August 31, 1956 | 9,300 |
| 6 | November 17, 1958 | 9,300 |
| | Total | 55,800 |

Very truly yours,
/s/ Robert B. Diemer
Robert B. Diemer
General Manager and Chief Engineer

Fresno, Kern, King, Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, Tulare and Ventura. Applicant owns and operates 24 hydroelectric plants, and five steam electric plants and operates one diesel generating plant under lease. Power from Hoover Dam also is available to applicant

• • • •

*Resale Service*

Applicant serves four resale customers: Cities of Anaheim, Azusa, Colton and Riverside. Each of these customers is served under resale contracts. The representatives of these cities presented Exhibits Nos. 71, 72, 73 and 74 to describe the conditions under which service is rendered in each city. Applicant's rate proposal regarding each of these cities is:

*Anaheim:* Continue in effect present contract, but apply Schedule PL-2 as contract rate and eliminate furnishing substation, without charge.

*Azusa:* Continue in effect present contract, but apply Schedule PL-2 as contract rate and eliminate furnishing substation without charge.

*Colton:* Continue in effect present contract, but apply Schedule PL-2 as contract rate and add 2 per cent to net bill for 4 kv delivery. Apply applicable schedules to separately metered pumping plants.

*Riverside:* Continue in effect present contract, but apply Schedule PL-2 as contract rate with 3 per cent discount for 33 kv delivery. Apply applicable schedules to separately metered pumping plants. Eliminate furnishing substation without charge.

An engineering consultant for these four cities introduced Exhibit No. 68 wherein the resale rate history and the effect of applicant's rate proposals were given. The following ratios of increase were shown:

(1251)

**EXHIBIT 16:** Single sheet entitled, "Southern California Edison Company, 'Net Generation'; i.e., Kilowatt-Hours Transmitted Years 1954 through 1958".

1251

## SOUTHERN CALIFORNIA EDISON COMPANY
## "NET GENERATION", i.e., KILOWATT-HOURS TRANSMITTED
## YEARS 1954 THROUGH 1958
## AS REPORTED TO THE FEDERAL POWER COMMISSION IN
## FPC FORM 12, SCHEDULE 1

| Source of Generation | 1954 | 1955 | 1956 | 1957 | 1958 |
|---|---|---|---|---|---|
| Steam Plans | 6,903,676,000 | 8,641,734,000 | 8,306,882,000 | 11,221,042,500* | 10,329,204,700* |
| Diesel Plant | 597,400 | (143,700) | (104,600) | (115,000) | (58,700) |
| California Hydro Plants | 3,102,134,120 | 2,815,718,629 | 4,710,302,792 | 3,298,865,306 | 4,511,802,853 |
| Hoover: | | | | | |
| Units A5, A6, and A7 | 590,519,200 | 407,803,600 | 416,026,300 | 558,472,800 | 941,990,700 |
| Units N5 and N6 | 176,607,434 | 56,765,048 | 23,408,636 | 649,280 | 116,432,830 |
| Sub-Total—Hoover | 767,126,634 | 464,568,648 | 439,434,936 | 559,122,080 | 1,058,423,530 |
| Total—FPC Form 12, Schedule 1 | 10,773,534,154 | 11,921,877,577 | 13,456,515,128 | 15,078,914,886 | 15,899,372,383 |
| Other Purchases and Exchanges (Not a part of FPC Form 12) | 160,510,180 | 443,736,294 | 412,789,648 | (25,551,955) | (74,236,310) |
| Grand Total—KWH transmitted | 10,934,044,334 | 12,365,613,871 | 13,869,304,776 | 15,053,362,931 | 15,825,136,073 |

NOTE: Parentheses indicate a red figure.
* Includes "Experimental" plant.

JWS:JCS
11/25/59

| | |
|---|---|
| Anaheim | 21.7% |
| Azusa | 17.3 |
| Colton | 24.1 |
| Riverside | 20.6 |

This consultant stated that the applicant's proposal is unsuited to the resale type of customer. His main contention was that industrial customers could obtain the same rate for power from the applicant as the four cities which means that the cities would operate at a serious disadvantage. He stated that the cities could not, under the proposed schedule, compete with areas outside of the cities served by applicant for the business of the large industrial customer. He contended that this situation already exists

1334

under the present rate structure wherein the large power rate is now lower than that charged the four resale cities. This situation he classed as discriminatory, irrational and unfair and suggested that the Commission take this opportunity to correct it.

He suggested a single resale rate schedule for this business which is summarized below:

Demand Charge
First 200 kw @ $1.25 per kw per month
Next 300 kw @ 1.05 " " " "
Next 2,500 kw @ 0.85 " " " "
Next 3,000 kw @ 0.80 " " " "
Next 5,000 kw @ 0.75 " " " "
Over 11,000 kw @ 0.70 " " " "

Plus Energy Charge
First 200,000 kwhr @ 0.75 cents per kwhr
Next 300,000 kwhr @ 0.66 " " "
Over 500,000 kwhr @ 0.62 " " "

Except that all kwhr usage in excess of 400 kwhr per kw of maximum demand ...... 0.55 cents per kwhr

**EXHIBIT 17: Letter dated November 20, 1959, from Nevada Public Service Commission to Southern California Edison Co., consisting of two pages signed, Public Service Commission of Nevada—J. G. Allard, Chairman.**

1252

J. G. Allard, Chairman
Noel A. Clark, Commissioner
Richard G. Campbell, Commissioner
Chester N. Newell, Secretary

State of Nevada
PUBLIC SERVICE COMMISSION

Carson City, Nevada
November 20, 1959

RECEIVED
Nov 23 1959
Law Department

Southern California Edison Company
Edison Building
P. O Box 351
Los Angeles 53, California
Attention: John R. Bury, Esquire
Assistant Counsel

Re: City of Colton, California vs.
Southern California Edison Company,
Federal Power Commission
Docket No. E-6821

Gentlemen:

We have been notified of the institution of the above captioned proceeding wherein the City of Colton seeks an order of the Federal Power Commission requiring that the Southern California Edison Company file a certain contract for electric service with the Federal Commission.

On analyzing this proposed schedule we find that it is lower than the applicant's proposed PL-1 and PL-2 rates and in general is lower than the A-7 rate being adopted herein. In our opinion the resale rate should be set at the level of the three-phase general service rate or possibly a little higher to give recognition to the lesser diversity of resale service compared to industrial service. In other words, we realize that the resale customer would be taking service during the summer morning peak and the winter evening peak, whereas an industrial customer might not be taking service to any large extent during the winter evening peak.

Applicant will be required to file a resale service schedule, Schedule R, that will be equivalent to the level of Schedule A-7. This will enable the cities to offer industry rates as good as applicant's because the industrial customers should improve the cities load factors sufficiently to earn incremental rates lower than the rates being charged the industrial customers.

Similar special conditions to those being provided for Schedule A-7 will be included in this schedule. Applicant's proposal to require that pumping plants outside of the cities be separately metered and billed on pumping rates is reasonable. We fail to see any need for a contract longer than a 3-year initial period which would mainly be useful in arranging for such special serving facilities as may be required by the cities. We estimate that the above resale rate would be competitive or lower than the cost of local power production by the cities from fuel oil and, accordingly, find no need for inclusion of a fuel clause in the resale rates. We will authorize applicant to revise the present rate levels of these resale contracts and negotiate for the other changes requested. However we will compute the revenue effects at the full Schedule R rate level for rate-making purposes.

*Street Lighting*

Applicant proposes two street lighting rate schedules: Schedule LS-1 for company-owned street lighting systems of the utilitarian type, and the other, Schedule LS-2, for customer-owned street lighting systems. These two schedules are proposed to supersede eight present schedules and, being system-wide in application, will eliminate the present zone arrangement. With regard to company-owned systems, a special condition has been added to provide for the installation of other than the specified standard equipment and a monthly charge is to be applied to certain steel pole installations to bring such installations into conformity at the end of five years with the proposed method of providing other than standard equipment. With regard to customer-owned street lighting systems, applicant proposes to continue supplying energy at either a metered rate or a flat rate. For the metered rate the energy blocking has been revised and the separate charge for the meter has been eliminated.

After considering applicant's proposal regarding street lighting rates, we find it reasonable except that we are reducing the proposed increase.

**EXHIBIT 24:** Document captioned: Copy Before the Public Utilities Commission of the State of California, in the Matter of the Application of Southern California Edison Company, etc., Application No. 33952, Reporter's Statement, under date of May 3, 1954, consisting of cover page and two pages, the second of which is headed, "Excerpts from Oral Argument of John W. Holmes, counsel for the City of Colton and others", commencing at 7924.

1435 COPY

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION EN BANC,
COMMISSIONER KENNETH POTTER AND
EXAMINER M. W. EDWARDS, Presiding

| In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY for an Order of the Public Utilities Commission of the State of California authorizing Applicant to increase rates charged by it for electric service. | Application No. 33952 |
|---|---|

## REPORTER'S STATEMENT

SAN FRANCISCO, CALIFORNIA
May 3, 1954
Pages 7727 - 7970
Volume LIII

| Reported By: | M. G. Obujen, Official Reporter |
|---|---|
| M. G. Obujen | Public Utilities Commission |
| M. C. McCutcheon | State of California |
| | 515 Van Ness Avenue |
| | San Francisco, California |

COPY

EXCERPTS FROM ORAL ARGUMENT OF JOHN W. HOLMES, Counsel for City of Colton and others, commencing at page 7924:

. . . The Commission could contrast this situation with Edison's service in Vernon, a clear case of an out-of-pocket cost to Edison and its other customers. The contract under which Edison renders that losing service is of no higher standing, nor blessed with any greater sanctity than its contracts with these four cities.

Yet Edison proposes to honor that Vernon contract, while asking you to abrogate our contracts that are compensatory.

COMMISSIONER POTTER: Mr. Holmes, what do you understand by the jurisdictional clause in the contract?

MR. HOLMES: I understand it gives the Commission the authority to change these contracts.

COMMISSIONER POTTER: The rates under the contract?

MR. HOLMES: Yes.

COMMISSIONER POTTER: Do you consider any changing in the rates by the Commission as an abrogation of the contract?

MR. HOLMES: Well, Mr. Commissioner, I could——

COMMISSIONER POTTER: It is in accordance with the terms of the contract, isn't it?

MR. HOLMES: Well, it depends on how you want to define the terms.

I wouldn't want the Commission to get the idea that I was contending that you have no authority to do this.

If you don't like my use of the term "abrogate" I would be happy to change it and perhaps use the word "change" or "modify".

**COMMISSIONER POTTER:** In the exercise of the Commission's jurisdiction—that is what the clause says—it is hardly an abrogation of the contract when action is taken in accordance with its terms, isn't it?

**MR. HOLMES:** I think there are two ways of looking at that.

I think technically it wouldn't be an abrogation of the contract.

On the other hand, I think that when two parties enter into a contract, with the intention of fulfilling it for its terms, that when one party ex parte comes to the Commission without seeking to renegotiate that contract with the other party, that there is an element in it of abrogation . . .

(1488)

**EXHIBIT 25: Document bearing notation in upper-hand corner, "Application No. 38382, Exhibit No. 53, Witness C. A. Winder, date, June 13, 1957," prepared on behalf of the City of Colton, California, and Others, and received in evidence at Edison's second rate proceeding before the California Commission in 1957.**

1488

Application No. 38382
Exhibit No. 53
Witness: C. A. Winder
Date: June 13, 1957

Application No. 38382

Before the

PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

---

## THE FINANCIAL EFFECT ON RESALE CITIES OF THE PROPOSED SCHEDULE R OF SOUTHERN CALIFORNIA EDISON COMPANY

PREPARED ON BEHALF OF THE FOLLOWING CITIES:

| | |
|---|---|
| ANAHEIM | COLTON |
| AZUSA | RIVERSIDE |

* * * *

1527

distribution voltage, measured on the secondary side of the transformer. The 1920 contract altered this arrangement by providing for measurement on the high side of the transformer but deducting 3% to offset transformer loss. The 1941 and subsequent contracts provide that transformers are to be furnished and maintained by Edison.

The present contract is dated December 1, 1947. Its term is to October 1, 1956 and from month to month thereafter until terminated by notice.

4. *Colton*

The City of Colton always has purchased all of its electric energy from Southern California Edison Company and its predecessors. The first contract was made in 1905, followed by later contracts in 1908, 1911, 1913, 1937, 1941 and 1945, when the present contract was made.

Among the matters discussed when the present contract was being negotiated were the amount and limitation of power factor discount and the limitation upon service by the City to customers outside the City.

The Edison Company always has furnished energy to Pacific Fruit Express Company and Southern Pacific Railroad Company, which properties are for the most part inside the city limits of Colton.

The City requested Edison to furnish energy to Crane Pacific Company, Alliance Ware Company and Kieckhefer Container Company, which are located inside the city limits, the City being unable at this time to furnish energy to them.

The City always has served some customers outside the city limits who were so located that service from the City's lines was convenient.

(1528)

## THE PRESENT CONTRACTS BETWEEN THE RESALE CITIES AND EDISON

The foregoing history of relations between the resale cities and Edison accounts for the fact that there is presently outstanding a contract between each of the four cities and Edison by which their respective service areas are defined and the obligation of the cities to purchase all their energy from Edison is incurred.

1529

The contracts are in writing. Each is for a stated term of years with indefinite automatic extension for successive periods unless terminated at the volition of either party. None has been terminated.

The contracts are identified as follows:

Riverside - May 25, 1949
Anaheim - November 13, 1951
Colton - October 1, 1945
Azusa - December 1, 1947

The said contracts uniformly obligate the cities to purchase all of their energy from Edison and not to render electric service outside the city limits except to such outside customers as the city may have been serving at the inception of the contract.

The consideration stated in each of the contracts for said obligations of the cities is the promise of Edison to sell to the cities all electric energy to meet their requirements.

Each contract obligated Edison to transform energy delivered by it to the distribution voltage of the city. P.U.C. Dec. No. 50449 authorized Edison to negotiate with the cities for a modification of this obligation to enable Edison to charge substation rental in addition to rates charged for energy. By letter agreements such rentals were subsequently negotiated by Edison with Riverside, Anaheim and Azusa. (Riverside: letter 9/29/54; Anaheim: letter 11/21/54; Azusa: letter 12/1/54.) Since the effective date of said letter agreements substation rental has been paid to Edison by those cities as follows: By Riverside, at the rate of $1,500.00 per month; by Anaheim and Azusa, at the rate of 1¼% per month of the recorded book cost of substation facilities devoted to their use.

P.U.C. Dec. No. 50449 established the existing Schedule R and the rates stated therein were ordered to supersede the rates stated in said contracts. Also superseded by said decision was the provision in the Riverside contract for conjunctive billing of the energy purchased for resale and energy purchased for municipal pumping.

Except as above noted, the said contracts remain in full force and effect.

1531

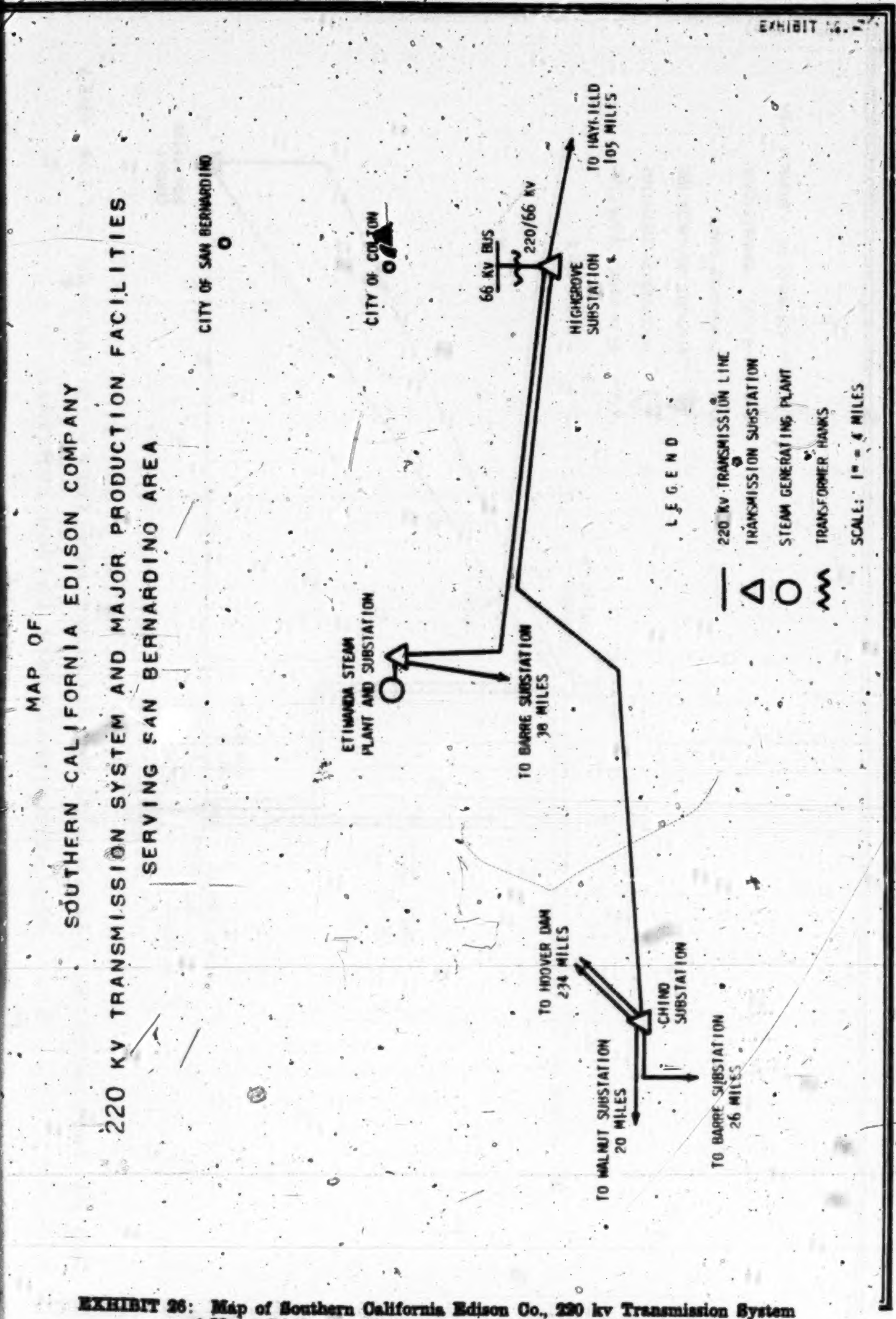
EXHIBIT No. ...
MAP OF
SOUTHERN CALIFORNIA EDISON COMPANY
220 KV TRANSMISSION SYSTEM AND MAJOR PRODUCTION FACILITIES
SERVING SAN BERNARDINO AREA
CITY OF SAN BERNARDINO
CITY OF COLTON
ETIWANDA STEAM PLANT AND SUBSTATION
66 Kv BUS
220/66 Kv
HIGHGROVE SUBSTATION
TO HAYFIELD 105 MILES
TO BARRE SUBSTATION 38 MILES
TO HOOVER DAM 234 MILES
TO WALNUT SUBSTATION 20 MILES
CHINO SUBSTATION
TO BARRE SUBSTATION 26 MILES
LEGEND
220 Kv TRANSMISSION LINE
TRANSMISSION SUBSTATION
STEAM GENERATING PLANT
TRANSFORMER BANKS
SCALE: 1" = 4 MILES

**EXHIBIT 26:** Map of Southern California Edison Co., 220 kv Transmission System and Major Production Facilities serving San Bernardino Area.

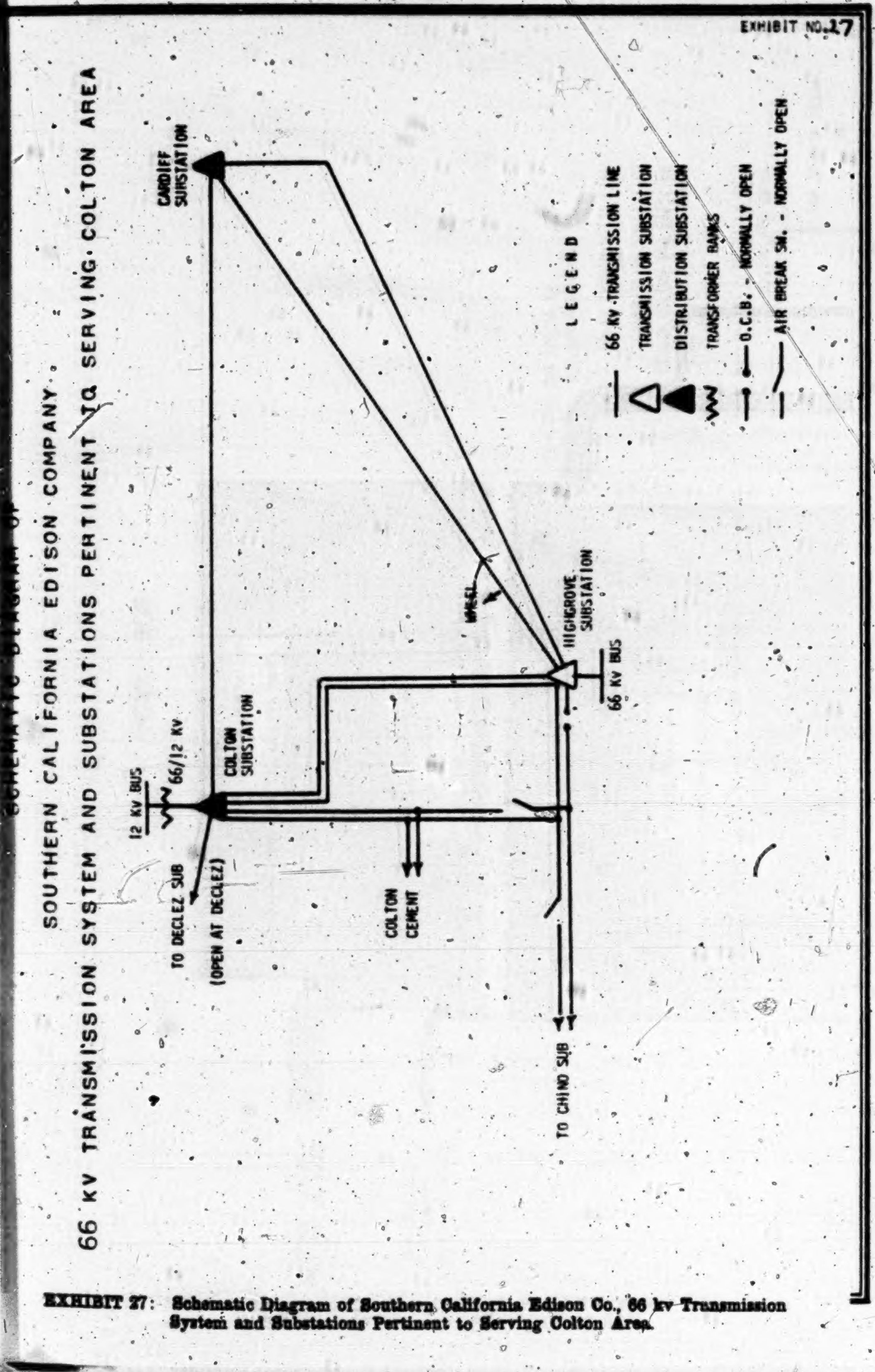
EXHIBIT NO. 17
SCHEMATIC DIAGRAM OF
SOUTHERN CALIFORNIA EDISON COMPANY
66 KV TRANSMISSION SYSTEM AND SUBSTATIONS PERTINENT TO SERVING COLTON AREA
CARDIFF SUBSTATION
WREL
HIGHGROVE SUBSTATION
66 KV BUS
12 KV BUS
66/12 KV
COLTON SUBSTATION
TO DECLEZ SUB
(OPEN AT DECLEZ)
COLTON CEMENT
TO CHINO SUB
LEGEND
66 KV TRANSMISSION LINE
TRANSMISSION SUBSTATION
DISTRIBUTION SUBSTATION
TRANSFORMER BANKS
O.C.B. - NORMALLY OPEN
AIR BREAK SW. - NORMALLY OPEN

**EXHIBIT 27:** Schematic Diagram of Southern California Edison Co., 66 kv Transmission System and Substations Pertinent to Serving Colton Area.

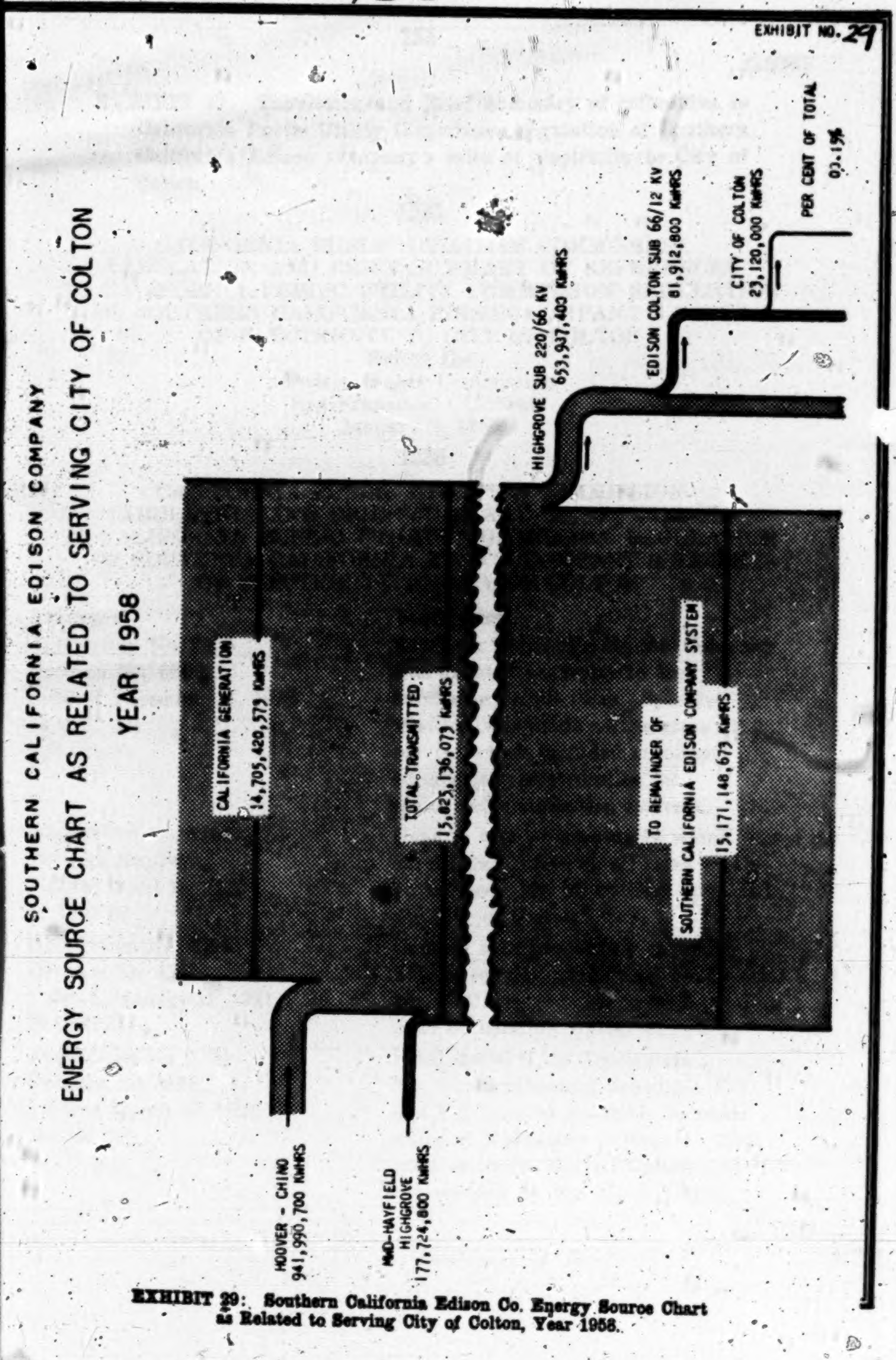
EXHIBIT NO. 29
SOUTHERN CALIFORNIA EDISON COMPANY
ENERGY SOURCE CHART AS RELATED TO SERVING CITY OF COLTON
YEAR 1958
HOOVER - CHINO
941,990,700 KWHRS
MAD-HAYFIELD
HIGHGROVE
177,724,800 KWHRS
CALIFORNIA GENERATION
14,705,420,573 KWHRS
TOTAL TRANSMITTED
15,825,136,073 KWHRS
TO REMAINDER OF
SOUTHERN CALIFORNIA EDISON COMPANY SYSTEM
15,171,148,673 KWHRS
HIGHGROVE SUB 220/66 KV
653,937,400 KWHRS
EDISON COLTON SUB 66/12 KV
81,912,800 KWHRS
CITY OF COLTON
23,120,000 KWHRS
PER CENT OF TOTAL
0.15%

**EXHIBIT 29:** Southern California Edison Co. Energy Source Chart as Related to Serving City of Colton, Year 1958.

**EXHIBIT 30:** **Tabulation and Brief Summary of references to California Public Utility Commission regulation of Southern California Edison Company's sales of electricity to City of Colton.**

1535

## CALIFORNIA PUBLIC UTILITIES COMMISSION TABULATION AND BRIEF SUMMARY OF REFERENCES TO CALIFORNIA PUBLIC UTILITY COMMISSION REGULATION OF SOUTHERN CALIFORNIA EDISON COMPANY'S SALES OF ELECTRICITY TO CITY OF COLTON

Before the
Federal Power Commission
San Francisco, California
January 6, 1960

1536

## CALIFORNIA PUBLIC UTILITIES COMMISSION TABULATION AND BRIEF SUMMARY OF REFERENCES TO CALIFORNIA PUBLIC UTILITY COMMISSION REGULATION OF SOUTHERN CALIFORNIA EDISON COMPANY'S SALES OF ELECTRICITY TO CITY OF COLTON

| **Reference** | **Description** |
|---|---|
| Application No. 3955<br>Decision No. 6000,<br>dated December 21, 1918<br>16 CRC 301 | Southern California Edison Company was granted authority to apply a surcharge on all rates. Specific mention was made to the class of service which included municipal service for redistribution on municipal distribution systems. |
| Application No. 5394<br>Decision No. 7424,<br>dated April 15, 1920<br>18 CRC 67 | General rate proceeding in which surcharge of 27% on all rates was authorized. Mr. M. O. Hert appeared for City of Colton. |
| Application No. 5394<br>Decision No. 8553,<br>dated January 17, 1921<br>19 CRC 311 | General rate proceeding in which 27% surcharge authorized by Decision No. 6000 was reduced to 20% pending final decision on matter of rates. |
| Application No. 5394<br>Decision No. 8815,<br>dated March 31, 1921.<br>19 CRC 395 | Final decision on Application No. 5894 authorized Schedules P-2 and P-3 be made available to resale cities at a delivery voltage of 2200 volts or more. City of Colton was represented by Mr. M. O. Hert. |

| **Reference** | **Description** |
|---|---|
| Case No. 1710<br>Decision No. 10350, dated April 24, 1922<br>21 CRC 597 | Commission investigation into reasonableness of rates of Southern California Edison Company rate reductions ordered for various classes of service including 10% for schedules P-2 and P-3. City of Colton represented by Mr. W. J. Carr. |
| Case No. 1759<br>Decision No. 12718, dated October 17, 1923<br>23 CRC 981 | Commission investigation into reasonableness of rates of Southern California Edison Company. New rate schedules ordered replacing temporary rates authorized by Decision No. 10350 and resulting in an estimated total reduction of $2,200,000 annually in gross revenues. City of Colton represented by Mr. W. J. Carr. |

| | |
|---|---|
| Application No. 10143<br>Decision No. 13860, dated August 1, 1924<br>25 CRC 461 | General rate proceeding granted Southern California Edison authority to collect surcharge of ten per cent on all schedules except agriculture for a period from September 1, 1924 through April 30, 1925. Messrs. J. H. Howard, W. J. Carr, and Jess E. Stephens appeared for the City Attorneys Association of Southern California. |
| Application No. 18639<br>Decision No. 25718, dated March 8, 1933<br>38 CRC 959 | Southern California Edison Company proposed to limit Schedules P-2 and P-3 to existing customers. Authorized to file Schedule designated<br>Zone "B" Limited<br>Resale Service<br>Schedule R-1, Colton |
| Edison-Colton Contract, dated October 6. 1941 | Filed with California Railroad Commission by letter dated 10-23-41. No change in rate from Edison's filed Schedule R-1 but included optional power factor adjustment clause and was for 10-year period. |

| Reference | Description |
|---|---|
| Southern California Edison Company Advice Letter No. 167<br>Resolution No. E-326, dated June 23, 1942 | The City of Colton exercised its option to include a power factor adjustment clause in Schedule R-1, Colton. No change in rate. |
| Application No. 27108<br>Decision No. 38461, dated December 10, 1945<br>46 CRC 848 | Commission authorized agreement dated 10-1-45 between the Southern California Edison Company and the City of Colton. |
| Southern California Edison Company Advice Letter No. 192, dated March 28, 1946 | Edison Company withdrew Schedule R-1 Colton (Revised C.R.C. Sheet No. 1899-E) as service was being rendered in accordance with contract of 10-1-45. |
| Application No. 33952<br>Decision No. 50449, dated August 17, 1954<br>53 Cal. PUC 385-450 | California PUC granted Southern California Edison Company a general rate increase. Authorized replacement of Colton contract rate with authorized resale tariff schedule. The City of Colton was represented by Mr. John W. Holmes and evidence was presented on behalf of the City of Colton by Mr. C. A. Winder. |
|  | 1538 |
| Application No. 38382<br>Decision No. 55703, dated October 15, 1957 | Southern California Edison Company was granted general rate increase. Schedule R, applicable to City of Colton, was increased an average of 16.73%. Evidence was presented on behalf of the City of Colton by Mr. Clarence A. Winder and the City of Colton was represented by Mr. John W. Holmes, special counsel, Mr. Martin C. Casey, City Attorney, and Mr. Clarence A. Winder. |

Exhibit No. 31
Witness: Royal W. Sorensen
Date: 5-4-60
FPC Docket No. E-6821

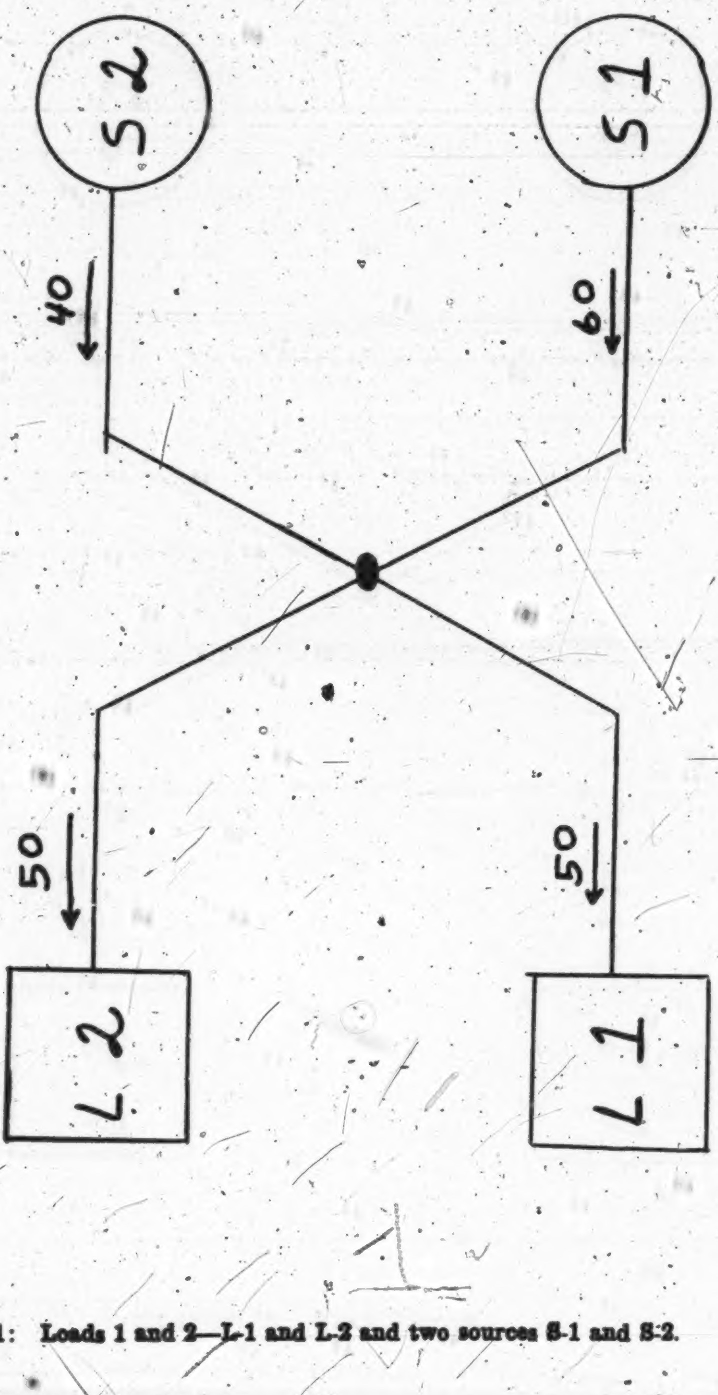
S 2
S 1
40
60
50
50
L 2
L 1

EXHIBIT 31: Loads 1 and 2—L-1 and L-2 and two sources S-1 and S-2.

Exhibit No. 32
Witness: Royal W. Sorensen
Date: 5 - 4 - 60
FPC Docket No. E-6821

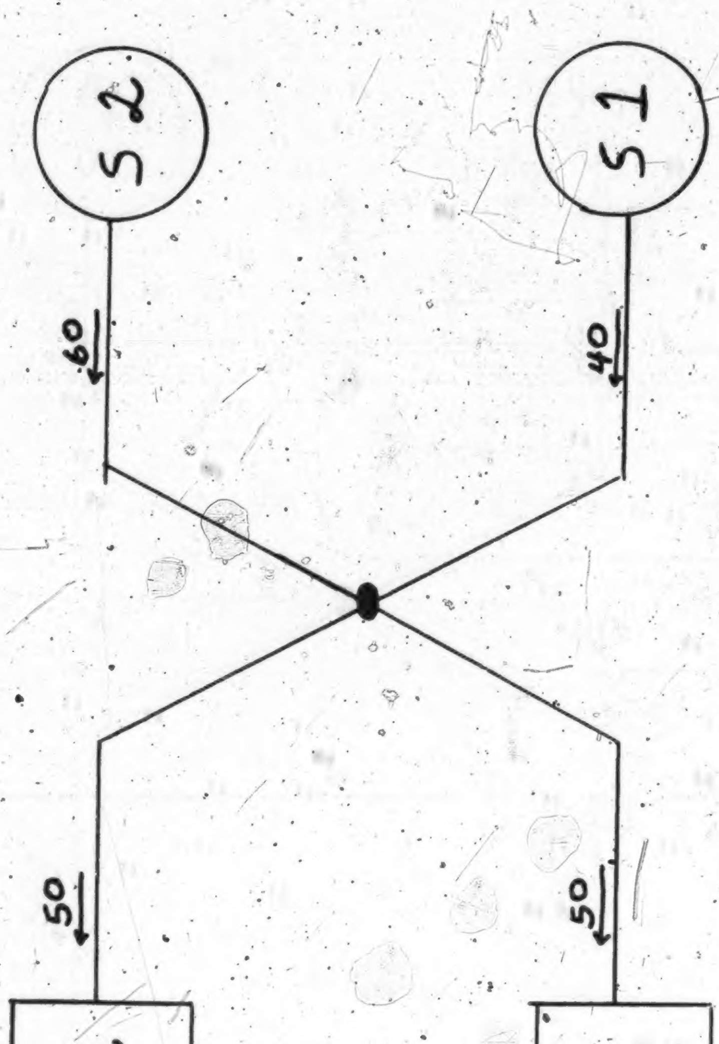
S 2
S 1
60
40
50
50
L 2
L 1

EXHIBIT 32: Blank diagram

Exhibit No. 33
Witness: Royal W. Sorensen
Date: 5-4-60
FPC Docket No. E-6821

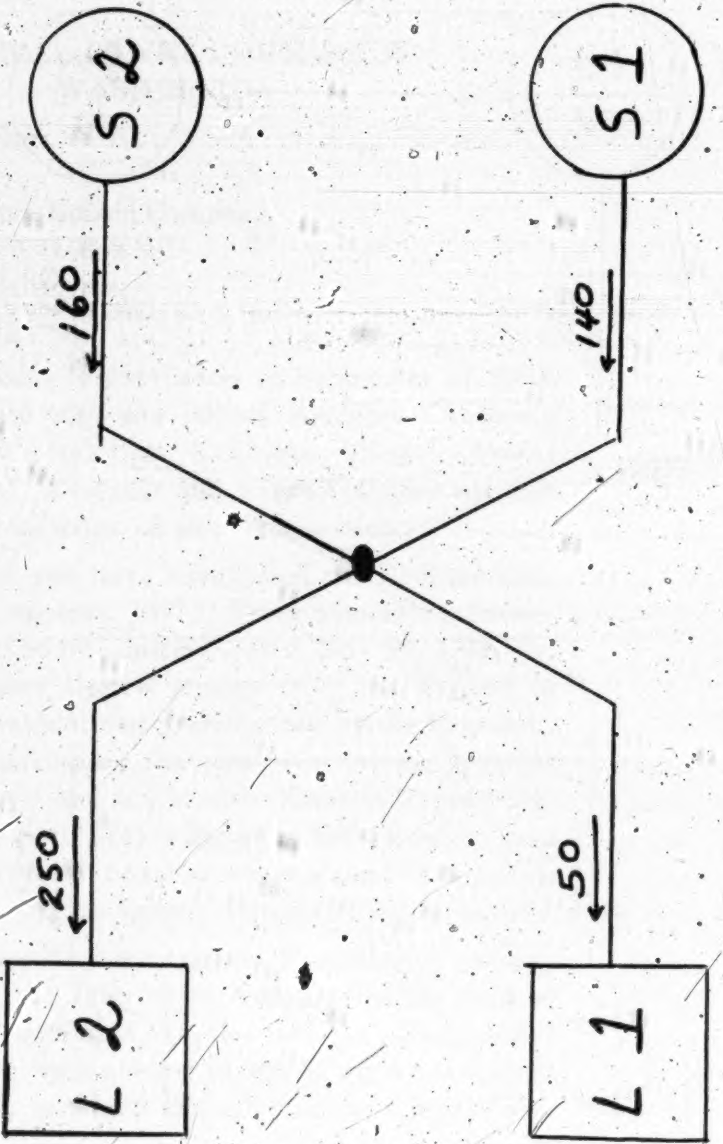
S 2
S 1
160
140
250
50
L 2
L 1

**EXHIBIT 33**: Diagram.

**ITEM R: Letter dated November 2, 1953, addressed to Bruce Renwick, Esq. signed by Leon M. Fuquay.**

COPY

1651

FEDERAL POWER COMMISSION
WASHINGTON

Bruce Renwick, Esq.
General Counsel
Southern California Edison Company
Edison Building, P. O. Box 351
Los Angeles 53, California

Dear Mr. Renwick:

This is in response to your letter of September 17, 1953, in which you state why you believe Southern California Edison Company's sales to California Electric Power Company, City of Riverside and City of Colton are not subject to the jurisdiction of this Commission.

We believe that you have misapplied the Boulder Canyon Project Act (45 Stat. 1057). From available information it appears that by contract dated May 29, 1941, the Company purchases electric energy from the Project in accordance with regulations promulgated by the Secretary of the Interior and under the provisions of the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act (54 Stat. 774) whereas it had formerly been a lessee of the Project; it also operates a part of the project in accordance with an agency contract of the same date.

Section 5 of the Boulder Canyon Project Act permits the Secretary of the Interior to contract for the sale of electric energy generated at the Hoover Dam under certain conditions with a view to obtaining a reasonable return. Section 6, to which you refer in your letter, provides for lease by the Secretary of units of the plant with the right to generate electric energy and then gives the Secretary power to "prescribe and enforce rules and regulations conforming with the requirements of the Federal Power Act, so far as applicable, respecting * * * control of rates and service in the absence of State regulation or interstate agreement * * *." Section 9 of the Adjustment Act provides that the Secretary is authorized to enter a contract for the termination of the existing lease and for the operation of the Project through agents. Any regulation of rates by the Secretary or by lessees. There is no suggestion that these Sections, or any other part of the two Acts, relate to the rate charged by the Company, a purchaser of project energy, when the energy is resold.

1652

Bruce Renwick, Esq. Page 2

Furthermore, as appears from the facts available here, the sales mentioned above and other sales made by the Company, such as that to San Diego Gas & Electric Company, are sales for resale of energy generated in Nevada; these sales are sales in interstate commerce subject to the jurisdiction of this Commission. They may not be regulated by the State Commission under the *Attleboro* case, 273 U.S. 83, and it is immaterial that the State Commission is purporting to regulate them. *Wisconsin-Michigan Power Commission* v. *F.P.C.*, 197 F. 2d 472, 479-480, certiorari denied, 345 U.S. 934. Compare *F.P.C.* v. *Arizona Edison Co.*, 194 F. 2d 679, 680 where transmission of electric energy generated at federal plants in other states, including Hoover Dam, was held subject to F.P.C. jurisdiction.

We therefore renew our suggestion that rate schedules for the above sales and other wholesale sales the Company may make of energy generated outside the State of California be filed with this Commission in accordance with the Federal Power Act and the Rules of the Commission.

Very truly yours,
/s/ Leon M. Fuquay
Secretary

**ITEM S:** **Six letters in the Edison correspondence file, part one, dated August 31, 1953, September 4, 1953, September 17, 1953. Letter of November 2, 1953 previously identified as Item B, and a letter of February 17, 1954, and letter dated March 24, 1954, addressed to Mr. Leon M. Fuquay.**

1653

FEDERAL POWER COMMISSION
Washington 25

August 31, 1953

Southern California Edison Company
601 West Fifth Street
Los Angeles 53, California

Attention: Mr. W. C. Mullendore, President

Gentlemen:

Available office data indicate that a substantial portion of the electric energy sold by your company at wholesale for resale involves interstate commerce because such energy consumed in the State of California is generated outside thereof. For example, your sales to California Electric Power Company and to the cities of Riverside and Colton appear to include energy purchased from the U. S. Bureau of Reclamation, which energy is generated in Nevada. Accordingly, the agreement for such sales as well as all others involving out-of-state energy should be filed with the Commission as rate schedules in accordance with Section 205 of the Federal Power Act and Part 35

(1653)

of the Commission's General Rules and Regulations thereunder.

Your prompt attention to this matter is requested.

Very truly yours,
/s/ J. H. Gutride
J. H. Gutride
Acting Secretary

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1654

COPY

September 4, 1953

Federal Power Commission
General Accounting Office Building
441 G Street, N. W.
Washington 25, D. C.

ATTENTION: Mr. J. H. Gutride
Acting Secretary

Gentlemen:

In Mr. Mullendore's absence, I wish to acknowledge the receipt of your letter of August 31, 1953, addressed to his attention, and relating to this Company's sales of electric energy to California Electric Power Company and to the Cities of Riverside and Colton for resale.

Your letter has been referred to our Legal Department with the request that it prepare a statement of the Company's views in the matter. As soon as such statement is prepared, I will forward it to you.

Very truly yours,
HAROLD QUINTON

REW:FJG

COPY

September 17, 1953

Our File No.
A-4679-3

J. H. Gutride, Esq.
Acting Secretary
Federal Power Commission
General Accounting Office Building
441 G Street, N.W.
Washington 25, D. C.

Dear Sir:

Your letter of August 31, 1953, addressed to Mr. Mullendore, was promptly brought to my attention upon my return from the East on September 11.

Without attempting to go into a detailed analysis of all of the facts and reasons why it has never been considered that our rates relating to the sales mentioned in your letter should be filed with the Federal Power Commission under Section 205 of the Federal Power Act, the following is an outline of two of the principal reasons why it is believed that such filing is not required.

Section 6 of the Boulder Canyon Project Act (45 Stat. 1057) authorizes the Secretary of the Interior, among other things, to prescribe and enforce rules and regulations respecting "control of rates and service in the absence of State regulation" with respect to Hoover Dam energy. Such jurisdiction, with the other powers referred to in the Section, envisages regulation by the Secretary of the Interior for the protection of both the investor and the consumer.

There has never been an absence of State regulation with respect to the rates charged for any of the sales referred to in your letter of August 31, 1953. The following

(1655)

references indicate the application numbers and the decisions of the Public Utilities Commission of the State of California with respect to each of the existing contracts relating to the sales covered in your letter:

California Electric Power Company
Application No. 27120
Decision Nos. 38628 and 45250

1656

J. H. Gutride, Esq.
September 17, 1953
Page 2

City of Colton
Application No. 27108—Decision No. 38461

City of Riverside
Application No. 30419
Decision Nos. 43376 and 43884

Furthermore, it would appear clear under the conditions relating to such sales, as set forth above, that in this situation there has never existed any "Attleboro gap" for which the regulation provided in the sections of Part II of the Federal Power Act relating to "sale of such energy at wholesale" were designed to close as clearly reflected in their legislative history.

The inclusion by the Federal Power Commission in its 1940 publication of the Federal Power Act of a specific reference to the aforesaid Section 6 of the Boulder Canyon Project Act in the Appendix to the FPC publication, designated "A compilation of statutes related to the Federal Power Act and the jurisdiction of the Federal Power Commission", has suggested to us recognition by the Commission of the applicability of that Section and of the jurisdiction of the Secretary of the Interior over the rate situation of this Company referred to in your letter as provided in the said Section 6 of the Boulder Canyon Act. There has been, of course, no recent change in the facts relating to such sales, and full disclosure has been reflected in the reports of this Company to the Federal Power Commission for many years.

Inasmuch as the situation and the rates applicable thereto have been subject to State regulation at all times and do not involve the "Attleboro gap" difficulty, it would appear to be both good law and good sense that neither dual nor triple regulation thereof is necessary or desirable. Clear recognition of this, we believe, is reflected in Section 6 of the Boulder Canyon Act.

If you desire any further information as to the sales or wish to arrange a meeting to discuss the matter further, we will, of course, be pleased to do so.

Respectfully submitted,

General Counsel

BR:HEW/fjg

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1657

COPY

FEDERAL POWER COMMISSION
Washington 25
February 17, 1954

Southern California Edison Company
Edison Building
P. O. Box 351
Los Angeles 53, California

Attention: Mr. Bruce Renwick
General Counsel

Gentlemen:

This is in reference to the Commission's letter dated November 2, 1953 and your acknowledgment thereof dated

(1657)

November 18, 1953 relative to the filing by your company of the rate schedules for certain sales of electric energy made by your company at wholesale for resale in interstate commerce.

Your letter of November 18, 1953 advised that your company proposed to review the facts and circumstances surrounding each of such sales and that you would advise the Commission with respect thereto. To date, however, no further response has been received from your company. Please advise the Commission promptly of the status of your review of this matter.

Very truly yours,
/s/ Leon M. Fuquay
Secretary

1657A

COPY

February 25, 1954

File No.
A-5465

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
General Accounting Office Building
441 G Street, N. W.
Washington 25, D. C.

Dear Mr. Fuquay:

Thank you for your letter dated February 17, 1954 with reference to our prior correspondence concerning the inapplicability of Section 205 of the Federal Power Act to certain sales of electric energy made by this Company. As I mentioned in my letter of November 18, 1953, we have wished to review the facts and circumstances surrounding the sales to which you referred and the various Acts and Decisions which may have a bearing upon the question which you raise. A memorandum discussing some of these matters is in the course of preparation which should be completed and forwarded to you within thirty days. I trust that this will meet with the approval of the Commission.

Very truly yours,

General Counsel

HWSjr:ob
AIR MAIL

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1658

COPY

March 24, 1954

Our File No.
A-5465

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
General Accounting Office Building
441 G Street, Northwest
Washington 25, D.C.

Dear Mr. Fuquay:

In your letter of November 2, 1953, which was in reply to our letter of September 17, 1953, you state that you believe we have misapplied the Boulder Canyon Project Act in reaching our opinion that sales of energy by Southern California Edison Company to California Electric Power Company and others are not subject to the jurisdiction of the Federal Power Commission.

I believe we should explain the factual situation which has been developed under the jurisdiction of the Secretary of the Interior, and by authority of the Boulder Canyon Project Act of 1928 and the Boulder Canyon Project Adjustment Act of 1940 in order that you may be apprised as to the basis of our position.

In 1928 when Congress enacted the Boulder Canyon Project Act, there was a determination by the Congress to make the Boulder Project, now the Hoover Project, self liquidating. Among the conditions which had to be met before there could be any appropriations from the Treasury was one which imposed upon the Secretary the duty that in advance of construction of the dam and power plant ". . . the Secretary of the Interior shall make provisions for revenues by contract, in accordance with the provisions of this act, adequate in his judgment to insure payment of all expenses of operation and maintenance of said works incurred by the United States and the repayment, within fifty years from the date of the completion of said works, of all amounts advanced to the fund . . . for such works, together with interest thereon made reimbursable under this act." (Sec. 4.(b), Boulder Canyon Project, December 21, 1928, 45 Stat. 1047)

In 1928 the only substantial load centers where the Hoover energy could be absorbed within a reasonable period were in and around the metropolitan areas of the City of Los Angeles, hereinafter referred to as the "City". These areas included the Cities

of Burbank, Glendale and Pasadena. The present substantial loads within the States of Nevada and Arizona were nonexistent. It was not possible for either state in 1928 to underwrite the project by entering into a firm contract "to take and/or pay for" electric energy from the project. The Metropolitan Water District of Southern California, a quasi-municipal corporation organized to serve principally the said metropolitan areas with water was, however, in a position to contract "to take and/or pay for" within a reasonable period the electric energy which would be required by the District to "pump Colorado River water into and in its aqueduct".

Secretary of the Interior, Ray Lyman Wilbur, devoted a great deal of effort to the negotiating of contracts for the sale of electric energy from the project which contracts had to contain *firm obligations* by responsible parties to pay over a period of fifty years one hundred per cent of the costs of the construction, operation and maintenance of the project. On June 17, 1930 the Secretary was able to report to the Senate Committee on Appropriations that though "a wide regional benefit from this power was desired" that "this wide distribution was not possible, however, if the states of Arizona and Nevada were required to firmly obligate themselves now for power which they cannot yet use". After reference to certain other applicants, the Secretary said: "two applicants had sufficient resources and market to be able to guarantee to take that amount of power, which is in excess of two-thirds of the entire present Southern California consumption. These were the City of Los Angeles and Southern California Edison Company".

In 1931 the City of Los Angeles and Edison Company, who were the parties whom the Secretary thus recognized as the principal underwriters of the Hoover Project, executed a contract with the United States which contract was thereafter executed on behalf of the United States by the Secretary of the Interior. This contract dated April 26, 1930 between the United States and Edison and the City was denominated as "Contract for Lease of Power Privilege".

Under Article 16 of said "Contract for Lease of Power Privilege",

(1659)

(a) the United States leased to the City certain portions of the power plant located in the State of Nevada, to Edison certain portions of the power plant located in Arizona and to both the use of certain facilities located in both states.

(b) The United States allocated all of the firm energy to be developed at the project on a percentage basis to the States of Arizona and Nevada, The Metropolitan Water District of Southern California, City of Los

1660

Mr. Leon M. Fuquay
Page Three
March 24, 1954

Angeles, Southern California Edison Company and three other private utilities and eleven municipalities, hereinafter called "allottees".

(c) The City of Los Angeles and Edison agreed to operate the power plant and to generate all of the energy to be developed at the project, including not only the energy allotted to and contracted for by the City of Los Angeles and Edison but the energy allotted and/or contracted for by the other "allottees".

The effect of the "Contract for Lease of Power Privilege" dated April 26, 1930 referred to above was that Edison acquired a hydro generating plant with the kilowatt capacity determined by the number and size of the generators to be installed, and acquired the right to a percentage of the kilowatt hours to be generated by this capacity. Though this contract was to provide Edison with a new hydro electric generating plant with an ultimate capacity of over 400,000 kw, it placed upon Edison the obligation, which did not exist insofar as its other owned plants, that even though Edison could not use all of the kilowatt hours available, it was obligated to pay for these kilowatt hours for a period of fifty years, thereby giving the United States the financial underwriting agreement which was essential if the project was to be constructed.

Though the States of Arizona and Nevada together were allotted and entitled to contract for 36% of the "firm energy" available at the project, the states did not contract for Hoover energy until many years later and did not actually withdraw and agree to pay for the entire 36% until 1952. Therefore, for nearly twenty years Edison and the City were required under their contracts *"to take and/or pay for" and did take and pay for the states' firm energy allocation.*

The Metropolitan Water District and the United States also executed a contract dated April 26, 1930. In this contract the District obligated itself "to take and/or pay for" 36% of the Hoover firm energy. Since the District was unable for many years to take a substantial part of this firm energy, the City and Edison took this unused firm energy; and therefore actually paid the United States for over 90% of all the firm energy available at the project.

On May 29, 1941 the United States, pursuant to the Act of Congress, approved July 19, 1940 (54 Stat. 774) designated the "Boulder Canyon Project Adjustment Act" entered into contract designated "Contract for the Operation of Boulder Power Plant" with the City of Los Angeles and Southern California Edison Company. This contract provides, among other things, that

(1) The Lease of the Boulder Power Plant to the City and

Mr. Leon M. Fuquay
Page Four
March 24, 1954

Edison as "lessees" under the contract designated "Contract for Lease of Power Privilege", dated April 26, 1930 shall terminate; and

(2) The Boulder Power Plant shall be operated and maintained by the City and Edison as "Operating Agents" of the United States up to and including May 31, 1987.

Concurrently with the execution of the "Contract for the Operation of Boulder Power Plant", the United States entered into separate contracts designated "Contract For the Sale of Electrical Energy" dated May 29, 1941 with the City, Edison, The Metropolitan Water District, the Cities of Pasadena, Glendale and Burbank, the State of Nevada and the Nevada-California Electric Corporation (now California Electric Power Company).

Since the Secretary of the Interior had the power under the General Regulations promulgated by the Secretary, pursuant to the Boulder Canyon Project Adjustment Act, to sell for the benefit of The Metropolitan Water District all firm energy allotted to and contracted for by the District but unused by it for pumping Colorado River water into and in its aqueduct after first giving the City and Edison the opportunity to purchase such energy, the City, Edison and California Electric Power Company, in 1945, determined to purchase all of the District's unused firm energy.

Accordingly, on May 31, 1945 the United States acting through the Secretary of the Interior entered into a contract with the District, City of Los Angeles, Edison and California Electric Power Company. This contract is denominated "Contract for Resale of Electric Energy at Boulder Dam Power Plant". It is generally known as the "District's 1945 Resale Contract". In this contract the City, Edison and California Electric Power agreed to take and pay for at the rates specified in the contract all of the District's unused firm energy for the period beginning May 31, 1945 and ending May 31, 1987.

Concurrently with the execution of the "District's 1945 Resale Contract" the City, Edison, California Electric Power Company and The Metropolitan Water District executed a contract dated May 31, 1945 and generally know as the "1945 Collateral Contract". This contract covers, among other things, the use of the generating equipment and the apportionment of generating charges at Hoover Power Plant and the transmission of the District's unused firm energy into the California load centers. This latter contract was expressly referred to in the "District's 1945 Resale Contract" to which the United States was a party and wherein it was provided that the "District's 1945 Resale Contract" should not become

effective until the "1945 Collateral Contract" was executed and delivered.

In our opinion a most important fact to be considered in connection with the question of jurisdiction of Hoover Project matters is that the Secretary of the Interior was a party to the "District's 1945 Resale Contract"; a contract which prescribed the rates to be paid by the City, Edison and California Electric for the energy purchased, and all of which said energy was to be transmitted by the City, Edison and California Electric to load centers in Southern California. A consideration of the two 1945 contracts (District's 1945 Resale Contract and the 1945 Collateral Contract) significantly develops the importance and necessity of the Hoover Project energy problem being within the exclusive jurisdiction of the Secretary. These contracts also demonstrate conclusively that the Hoover Project contracts executed pursuant to the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act and the Regulations promulgated by the Secretary pursuant to said Acts so far as Edison is concerned are contracts with the United States of America expressly providing for the generation, transmission and distribution of energy for sale and use by Edison in California.

In evidence of the over all effect of the contracts by the United States with Edison and the City, it should be noted that though Edison and the City must continually employ large forces of men familiar with the operation of the Hoover hydro electric plant and the transmission and other facilities in connection therewith, all the City and Edison ever secure with respect to this important undertaking is a reimbursement dollar for dollar for the moneys expended with no allowance for profit. The only consideration that the City and Edison receive for this operation of the Hoover Project, as Operating Agents of the United States, is that it enables them to integrate their respective systems with the Hoover Project.

Both the City's and Edison's systems utilize steam and hydro generation plants located in many instances at great distances from load centers. Electrically this means that if the Hoover Project operations were not integrated through the facilities and personnel of the two allottees, there might be serious interruptions in the service and financial loss to millions of customers utilizing Hoover energy.

Article 20(b)(i) of the "Contract for the Operation of Boulder Power Plant", dated May 29, 1941 between the United States acting through the Secretary of the Interior and the City of Los

Angeles and Southern California Edison Company provides in part as follows:

> "(b)(i) Subject to the statutory requirement that Boulder Dam and the reservoir created thereby shall be used: First, for river regulation, improvement of navigation and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights mentioned in Section 6 of the Project Act; and third, for power, the operation of Boulder Power Plant shall be reasonably integrated with the operation of other projects on the Colorado River owned and operated by the United States at which power is or may be developed and with the operations by the Operating Agents of their respective systems, including their other sources of electrical energy; provided that the time and rate of delivery of energy to allottees and contractors other than the City and Edison Company (while they are Operating Agents under this contract) shall not be affected by any program of integrated operation agreed to, decided on or determined under this Article 20. Such reasonable integration of operation shall be with the view of effecting economical and efficient use of generating machinery and equipment and economical and efficient use of water at Boulder Dam and such other projects and at the Operating Agents' other sources of electrical energy.

(1663)

It is understood and agreed that within the limits of use of water for power purposes at Boulder Power Plant fixed in a program of integration of operations agreed upon, decided or determined under Article 20(b) hereof, and during the effective period of such program, the manner of integration between Boulder Power Plant and the other sources of power on the respective systems of the Operating Agents shall rest with the respective Operating Agents, it being the intention of the parties that the programs of integration, although agreed upon, decided on or determined for the purposes and with the views set forth above, shall directly control only the manner in which the Operating Agents shall or may operate Boulder Power Plant and shall not affect the manner in which the Operating Agents operate their respective systems, including their other sources of electrical energy, except as such operations by the Operating Agents of their respective systems may be consequentially affected by such direct control of Boulder Power Plant operations."

The Congress of the United States recognizing that the energy sold must be utilized in the metropolitan areas of Los Angeles, provided in the Boulder Canyon Project Act for the granting

1664

Mr. Leon M. Fuquay
Page Seven
March 24, 1954

to the City, California Electric and to Edison of rights of way for the major transmission lines and facilities which had to be built to carry the energy to the load centers in California. There are now seven of such transmission lines crossing miles of government land which with their facilities involve an investment of over forty million dollars. The rights of way were definitely a part of the consideration received by City, California Electric and Edison, in addition to the right to utilize the capacity of the generators and the kilowatt hours generated by such capacity.

The Boulder Canyon Project Act and the contracts drawn thereunder were based upon the understanding that the power was being sold by the United States for transmission into California and for sale in any manner determined upon by Edison within the State of California subject to the jurisdiction of the Public Utilities Commission of California. In 1931 the City and Edison and the representatives of the United States had before them Article 6 of the Boulder Canyon Project Act and if there was to be any limitation by the United States with respect to the price at which Hoover energy could be sold within the State of California, the representatives of the United States had express authority to insert such limitations within the contract. This was not done. Since the first delivery of Hoover energy to Edison in California in 1939, and for a period long prior thereto, all charges for energy sold at wholesale for resale, or otherwise, in the State of California by Edison have been authorized by the Public Utilities Commission of that state.

The Boulder Canyon Project Adjustment Act of 1940 and the contracts entered into under it did not, in our opinion, change the legal situation that existed under the Boulder Canyon Project Act. The physical and legal situation with respect to the underwriting of the Hoover Project by the City and Edison, the generation, transmission and distribution of Hoover energy that exists today is substantially identical with that prior to 1940. In support of our opinion we submit that

(1) neither the City of Los Angeles or Edison has become since 1941 a mere purchaser of kilowatt hours. On the contrary, the City and Edison have, at all times under their contracts with the United States, been obligated to generate and transmit Hoover energy and to distribute this Hoover energy in the only territory which was in 1931 and in 1941 and now is that served by them, all lying within the State of California.

(2) The several obligations of the City and Edison to take and/or pay for energy allotted to and contracted for by each of them exist today as in 1931.

1665

Mr. Leon M. Fuquay
Page Eight
March 24, 1954

(3) The contractual obligations of both Edison and the City of Los Angeles with respect to the power allocations and present contracts of the States of Nevada and Arizona remain unchanged. The contracts between the United States and Edison and the City, and the contracts between the United States and the States of Arizona and Nevada provide that the states or either of them may relinquish all or portions of their respective firm energy obligations and upon such relinquishment, the City and Edison will again be obligated to take and/or pay for'' the state energy relinquished. These express obligations of the City and Edison continue until May 31, 1987 and necessarily mean that the facilities to generate and transmit Hoover energy and to distribute such relinquished states' energy in California must be provided by the City and Edison at all times.

(4) The Boulder Canyon Project Act grants general regulatory power to the Secretary of the Interior. This regulatory power is not limited or curtailed by the Boulder Canyon Project Adjustment Act.

(5) The rights and obligations of the City and Edison Company with respect to the Hoover Project formerly contained in the "Contract For Lease of Power Privilege", dated April 26, 1930, are now set forth in the agency contract designated "Contract for the Operation of Boulder Dam Power Plant" and "Contract for the Sale of Electrical Energy" each dated May 29, 1941.

Why did the States of Arizona and Nevada so contract with the United States? It is clear that in the event of a serious depression or in the event power from other sources on the river becomes available to the states, that the states determined that it would be legally necessary for them to be able to secure a relinquishment from the Hoover obligations, and made it a specific condition that the United States must at the option of the states relinquish the states from the obligations to take and pay for 36% of firm Hoover energy or any part thereof.

The Federal Power Commission was in existence at the time Congress enacted the Boulder Canyon Project Act in 1928, and

Congress when referring to the Commission in the Project Act granted the rate-making powers of the Commission so far as Boulder energy was concerned, to the Secretary and *did so only after it had been brought to its attention that the proposed Act was lacking in control over the* *matter of rates.* Not only were the rate-making powers of the Commission insofar as Boulder energy was concerned granted to the Secretary, but most of the other regulatory powers of the Commission were also granted, including "maintenance of works in condition of repair adequate for their efficient operation, maintenance of a system of accounting, control of rates and service in the absence of State regulation or interstate agreement, valuation for rate-making purposes, transfers of contracts, contracts extending beyond the lease period, expropriation of excessive profits, recapture and/or emergency use by the United States of property of lessees, and penalties for enforcing regulations made under this Act. . . . He (the Secretary) shall also conform with other provisions of the Federal Water Power Act and of the rules and regulations of the Federal Power Commission, which have been devised or which may be hereafter devised, for the protection of the investor and consumer." The regulatory authority granted to the Secretary as to the Boulder Project under Section 6 was, in my opinion, that which the Federal Power Commission now claims.

In December 1925, the United States Senate Committee on Irrigation of the 69th Congress—1st Session—conducted hearings on the Boulder Canyon Project Act bill. At these hearings, the committee had before it a letter of Mr. O. C. Merrill, Secretary of the Federal Power Commission, to the Chairman of the Senate Committee. This letter read in part as follows:

> "(2) There is no requirement that lessees shall maintain their works in a condition of repair . . . or that they shall make necessary renewals and replacements . . .
>
> "(5) There is no requirement that any Federal Agency shall, in the absence of State regulation or of interstate agreement have any jurisdiction to regulate

rates, services, or security issues of lessees, whether the power developed be or not be transmitted in interstate commerce.

"(6) There is no requirement that in valuation for rate making purposes no values shall be claimed in excess of amounts prescribed for purposes of purchase by the United States.

"(7) There is no prohibition against transfers at the sole option of the lessees of the rights proposed to be granted.

1667

Mr. Leon M. Fuquay
Page Ten
March 24, 1954

"(9) There is no provision for the appropriation of excess profits . . .

"The requirements recited above are the elements of an established national policy respecting power development, a policy that has been attended with marked success. Millions of H.P. have been developed under that policy in the last five years with full protection to every essential public interest. Nothing has come to my attention which would justify or excuse the repudiation of that policy on the Colorado River however much any prospective applicant may desire to secure special privileges, or to ignore the general public interest, or to escape the obligations assumed by every other agency public or private, which develops a power site under the jurisdiction of the United States. These public safeguards can be maintained only if the leases of power privileges on the Colorado as well as everywhere else, and under the proposed bill or otherwise are made subject to the Federal Water Power Act.

(1667)

*Administration*

"The bill proposes to place the administration of the project, the issuance of leases, and the determination of charges in the hands of the Secretary of the Interior. All other power projects under Federal jurisdiction are administered by the FPC, of which the Secretary of the Interior is a member. The commission was created for the purpose of coordinating the power activities of the, three departments which previously had acted independently and with conflicting policies. To return to the former practice, even in part, would be a backward step in public administration. If it is determined to build the project in whole or in part at government expense or with loan of government credit, the construction of the project may best be left, as proposed, with the Secretary of the Interior, as well as all matters relating to irrigation structures or uses; but if the existing policy of coordinated administration of water power is not to be overthrown, the leasing of power privileges should be in the hands of the FPC to be exercixed (sic) under the provisions of the FWPA, and under such special provisions, if any, as it may be deemed desirable to include in the bill under consideration. . ."

Following these hearings, the bill was redrafted and

1668

Mr. Leon M. Fuquay
Page Eleven
March 24, 1954

reintroduced. The new bill contained Section 6 in its present form. When the redrafted bill was reported out of committee in its present form, the proponents of Federal Power Commission control continued to attack it as shown by the minority views in House Report No. 1657, 69th Congress—2nd Session. This minority report reads in part as follows:

> ". . . These facts have not escaped Government officials. Their significance and the radical departure from Government policy has been pointed out to the committee in a thoroughly considered critical report on this project, written by three Cabinet members, Secretaries Weeks, Work, and Wallace. I refer to their letter addressed to the chairman of the House Irrigation and Reclamation Committee under date of March 24, 1924. (See pp. 1000-1003, hearing on H.R. 2903.) Because of its clarity of statement and soundness in principle, I appeal to every Congressman to read that letter before he decides his attitude toward this bill, and I have attached hereto a copy so that it may be readily available. In particular I direct attention to the following part from that letter:
>
> > 'In 1920, after many years of consideration Congress adopted a general national policy with respect to power development on sites under Federal control. That policy has been attended with marked success. Millions of horsepower are being constructed under the terms of the Federal Water Power Act. These sites are being held in public ownership under public control, with every essential public interest being protected. These (sic) is no occasion for going outside the terms of that act to secure the production of all the electric energy required at terms fair both to the developer and user. Under such circumstances we do not deem it desirable to enact special Legislation modifying the established policy by giving to any individual, corporation, or community special privileges not accorded to all.'

(1668)

"Congress, also, in the Federal Water Power Act, created a single executive agency for the administration of all water powers under Federal ownership or control. The plan thus adopted is proving eminently satisfactory. We believe any change in such method of administration is undesirable and therefore, whether the Bounder (sic) Canyon Dam or some other be built and whether at public or private expense, we believe

1669

Mr. Leon M. Fuquay
Page Twelve
March 24, 1954

the disposition of any power developed should be handled by the Federal Power Commission under the general terms of the Federal Water Power Act and not as proposed in the bill. All interests of the Department of the Interior will be adequately met through the membership of the Secretary of the Interior or the Commission."

In debate on the Senate floor, Senator Johnson expressed belief that the Secretary of the Interior had full regulatory power as shown by the following:

Congressional Record—69th/2nd p. 4307—Debate on S. 3331

Mr. McKellar: "Could we not provide in the bill that when the power is developed it shall be operated by the government, and the government shall sett (sic) it to the cities and towns preferably, but, it (sic) not, to other users at reasonable prices, and not sell it through power companies which will charge the people tremendous prices?"

> Mr. Johnson: "The bill gives the cities and towns and political subdivisions a preferential right first. Now it is essential in this particular construction that there by (sic) an elasticity in the administration of the bill, left with the Secretary of the Interior, who is to administer it . . ."

It would, therefore, appear that our position with respect to Section 6 is correct and that the Secretary of the Interior was granted authority for the "control of rates" without any limitation in the absence of State regulation or interstate agreement. It is obvious that the United States of necessity had control of the price at which energy could be secured from the project because Congress had prescribed in the Boulder Canyon Project Act the formula for the establishment of rates, which formula was to the effect that rates for water and power should be adequate to liquidate the project within fifty years. The problem presented to Congress by Mr. Merrill of the Federal Power Commission involved the resale of energy which passed over state lines. Section 6 was therefore drafted to give the Secretary power to control resale rates charged by persons contracting for power. Section 6 also establishes guides for the Secretary in his exercise of powers delegated to him. There would be absolutely no need for the Secretary to conform with the Federal Water Power Act and with the rules and regulation of the

Federal Power Commission for the protection of the investor and consumer unless he were to act in lieu of the Federal Power Commission.

Furthermore, the Boulder Canyon Project Adjustment Act did not limit or curtain the regulatory power granted to the Secretary by the Boulder Canyon Project Act.

House Report No. 2328—76th Congress, 3rd Session. May 28, 1940.

Part VI.—Letter of Secretary of the Interior Ickes to Chairman White which states in part as follows:

"In consideration for the reduction in the present rates which it is anticipated will result under the proposed legislation, it is provided that the United States shall regain control of the operation and maintenance of the power plant, such control to be exercised either directly by Government employees or through an agent or agents designated by the Secretary of the Interior. At present, although title to all the works is in the United States, it operates only the dam and outlet works, and the power plant is operated by the Bureau of Power and Light of Los Angeles and the Southern California Edison Co., severally, as lessees. The United States is now constructing and will operate a power plant at Parker Dam, approximately 155 miles below the Boulder Dam on the Colorado River, and the construction and operation by the United States of a dam and power plant at the Bulls Head site on the Colorado River, midway between Boulder Dam and Parker Dam, is now being investigated. Moreover, additional projects, at which power will be developed, may be constructed by the United States in the future at other points on the Colorado River. Considerable seasonal water will be available at these projects, the maximum utilization of which, for power and other purposes, will be impossible unless the use of water at those projects is coordinated and correlated. I am convinced that to achieve the most economic and efficient use of available water at the various projects on the Colorado River, the operation of Boulder Dam power plant by the United States, directly or through an agent or agents subject to its control and direction, is essential and it is the view of this Department that the receipt of benefits by the power contractors under the proposed legislation should be conditioned upon such operation."

"The second matter relates to the manner in which the

Department proposes to administer this legislation if it is enacted. The power contractors who had initiated the proceedings designed to bring about changes in the existing law were quite properly, much interested in the manner in which the Department proposes to administer the authority that might be given to it if this amendatory legislation should be enacted. I have given my assurance that if the proposed legislation is enacted and becomes effective, I would exercise the authority thereby conferred upon the Secretary of the Interior by executing contracts designating the present lessees, the Southern California Edison Co., Ltd., and the Department of Water and Power of the City of Los Angeles, as operating agents of the United States of the respective portions of the power plant of which each is now the lessee, as soon as their authority to act as such operating agents is established. I have also planned that the existing allotments of power will not be changed in any respect.

(1671)

"I believe that the provisions of the proposed legislation are consistent with the statutory provisions governing other major multiple purpose projects, and that it provides for a desirable rearrangement of the rights and interests of the parties affected thereby."

Part IV.—Solution of Controversies and Effect of Bill.

"(a) . . . to direct the Secretary of the Interior to promulgate rates resulting in revenue sufficient to satisfy the following requirements. First, to operate and maintain the dam . . .

"(i) *Benefit to consumers.* From 75 to 92 per cent of the firm energy at the dam has been allotted to States and public corporations operated by and for the benefit of the public. (The variation depending on uses by the States.) It is the established practice of such of these organizations as resell energy to consumers to readjust rates at frequent intervals so as to pass on the benefits of all operating economies. One of the present purchasers (the Metropolitan Water District, 36%) does not resell its energy but uses its supply for pumping water and is itself a consumer. *The private corporations involved operate under State regulation and are subject to adjustment so as to avoid excessive earnings on invested capital and to give to the consumer the benefit of all economies in the generation, transmission and distribution of energy.*" (italics added)

1672

Mr. Leon M. Fuquay
Page Fifteen
March 24, 1954

The contracts executed by the Edison Company and the United States acting by and through the Secretary of the

Interior under authority of the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act are property and are protected by the Fifth Amendment of the Constitution of the United States. If the Federal Power Commission were to destroy the property rights acquired by Edison Company under such contracts with the United States, such action would, in my opinion, be an unconstitutional act by the Commission. Rights against the United States arising out of contracts were held to be protected by the Fifth Amendment in the case of *Lynch vs. United States,* 292 U.S. 571, 78 L. ed. 1434 (1934), in which the court in an opinion of Justice Brandeis said at page 579:

> "The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment . . . When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals."

In our opinion the cases cited in your letter of November 2, 1953 in support of your conclusion that the sales of energy by Edison Company to the California Electric Power and others are subject to the jurisdiction of the Federal Power Commission are not in point and can be distinguished on their facts.

Our conclusion is that the Boulder Canyon Project situation with respect to Edison and the City is not comparable to any power arrangement which has heretofore been considered by the Federal Power Commission or the courts.

(1672)

Some of the characteristics that distinguish the position of Edison Company are as follows:

(1) The Secretary of the Interior in Section 5 of the Boulder Canyon Project Act was given power to contract for the generation and distribution and sale of the energy available at the project at charges that will meet the revenue requirements of the Act, including total amortization of the cost of the project, except the cost allocated to Flood control.

(2) The Secretary under Section 6 of the Boulder Canyon Project Act was authorized under certain conditions

1673

Mr. Leon M. Fuquay
Page Sixteen
March 24, 1954

to control rates charged by persons contracting for the energy. This authority was not limited or curtailed by the Adjustment Act enacted July 19, 1940. He exercised this authority when he executed the power contracts of April 26, 1930 and May 29, 1941 with Edison, thereby leaving the determination of just and reasonable rates to the Public Utilities Commission of the State of California.

(3) The regulatory authority in general granted to the Secretary as to the Boulder Project under Section 6 was that which the Federal Power Commission now claims.

(4) The City and Edison Company are the principal underwriters of the cost of the entire project regardless of whether or not they take any power whatsoever.

(5) Edison and the City are operating the project with their own employees and integrating the operations of generation, transmission and distribution with all of the generation, transmission and distribution facilities of their respective systems, which are principally located in the State of California, there being no distribution whatsoever by either Edison or the City in the States of Arizona or Nevada.

The Boulder Canyon Project situation is unique and complex. In this letter I have attempted to give you a succinct statement of the basic factual situation involved in the Hoover Project and of the several contracts executed by the United States and Edison which, in our opinion, provide for the generation at the Hoover Power Plant and the transmission and distribution of electric energy in the State of California without regulation or regulation of the Federal Power Commission.

Should you have any further questions concerning this matter, we shall be pleased to meet with you.

Very truly yours,

General Counsel

BR:mr

Received
May 9 10:30 AM '58
Federal Power Commission

## UNITED STATES OF AMERICA
## FEDERAL POWER COMMISSION

| | |
|---|---|
| In the Matter of: City of Colton, Calif.<br>vs.<br>Southern California Edison Company | Docket<br>No. E-6821 |

# PETITION FOR AN ORDER

Petitioner, City of Colton, California, hereby files this petition with the Federal Power Commission to institute an investigation looking to issuance of an order (1) requiring Southern California Edison Company to file its contract with petitioner for the sale for resale of electric energy in interstate commerce pursuant to the provisions of the Federal Power Act and the rules and regulations thereunder; (2) requiring Southern California Edison Company to cease and desist from charging petitioner any rates and charges other than those set forth in said contract and duly filed with the Commission; (3) requiring Southern California Edison Company to determine and account for the difference between the amounts actually charged and paid by petitioner and those which should have been properly charged and paid in accordance with the terms of the contract as a legally effective rate schedule; and (4) requiring Southern California Edison Company to make appropriate refunds to petitioner, together with interest at the rate of 6% per annum. In support of its petition, petitioner respectfully shows the following:

1675

1. Petitioner City of Colton is a municipal corporation, organized and existing under the laws of the State of California, and located in the County of San Bernardino in said State.

2. Petitioner is the owner and operator of an electric distribution system within the municipal limits of the City of Colton and environs.

3. Petitioner, under a contract dated October 1, 1945, expiring October 1, 1955, and running thereafter from month to month, until terminated by either party, purchases its entire supply of electric energy for distribution in the City of Colton to residential, commercial and industrial users from Southern California Edison Company.

A true copy of the contract is attached hereto as Exhibit "A".

4. Southern California Edison Company is a corporation, organized and existing under the laws of the State of California, is engaged in the business of generating, transmitting, selling and distributing electric energy in public service in the States of Nevada and California, and as the holder of licenses issued for hydroelectric projects by the Federal Power Commission, Southern California Edison Company is a licensee under Part I of the Federal Power Act.

5. Pursuant to the contract described in paragraph 3 hereof, Southern California Edison Company sells electric energy to petitioner for resale in the City of Colton.

1676

6. Petitioner is informed and believes that an investigation by this Commission will show that a substantial part of the electric energy sold by Southern California Edison Company to petitioner has been at all times during

the life of the contract and still is generated at the Hoover Dam and Power Plant in the States of Nevada and Arizona or other sources outside the State of California and is transmitted by Southern California Edison Company from said point of generation by means of high voltage transmission facilities owned and operated by Southern California Edison Company to the point of delivery to petitioner at or near the municipal limits of the City of Colton.

7. By reason of the ownership and operation of the facilities for the transmission of electric energy into the State of California and the sale thereof for resale to petitioner, Southern California Edison Company is a "public utility" within the meaning of Part II of the Federal Power Act and the sales of electric energy are sales for resale in interstate commerce subject to the jurisdiction of the Federal Power Commission.

8. As a contract for the sale for resale of electric energy in interstate commerce subject to the jurisdiction of the Federal Power Commission, the contract of October 1, 1945 has been and is required to be filed by Southern California Edison Company as a rate schedule under the Federal Power Act and the rules and regulations related thereto, but Southern California Edison Company has failed to file such contract in violation of the provisions of the Act and the rules.

9. In further violation of the provisions of the Act and the rules, Southern California Edison Company since September 13, 1954 has demanded and collected from petitioner for the sales of electric energy under said contract rates and charges higher than those provided therein and since November 15, 1957 has demanded and collected

from petitioner still higher rates and charges in violation of the provisions of the contract, the Act and the rules and regulations thereunder.

10. Southern California Edison Company sought an increase in rates to the City of Colton in a general rate proceeding brought before the California Public Utilities Commission which granted an increase in an order dated October 15, 1957 in application No. 38382. Petitioner has at all times since the order of the California Public Utilities Commission of October 15, 1957, paid the higher rates and charges under protest.

11. Communications respecting this petition should be addressed to the attorney for petitioner, John W. Cragun, Esquire, Wilkinson, Cragun & Barker, 744 Jackson Place, N.W., Washington 6, D. C.

Wherefore, the petitioner, City of Colton, California, prays that the Federal Power Commission institute an investigation

looking to issuance of an order (1) requiring Southern California Edison Company to file its contract with petitioner for resale of electric energy in interstate commerce pursuant to the provisions of the Federal Power Act and the rules and regulations thereunder; (2) requiring Southern California Edison Company to cease and desist from charging petitioner any rates and charges other than those set forth in said contract and duly filed with the Commission; (3) requiring Southern California Edison Company to determine and account for the difference between the amounts actually charged and paid by petitioner and those which should have been properly charged and paid in accordance with the terms of the contract as a legally effective rate schedule; (4) requiring

Southern California Edison Company to make appropriate refunds to petitioner, together with interest at the rate of 6% per annum; and (5) for such other and further relief as shall be proper.

City of Colton,
Petitioner,
By: Lyman H. Cozad
Lyman H. Cozad, City Manager

State of California )
)ss
San Bernardino County)

Lyman H. Cozad, being first duly sworn, on oath says that he is City Manager of the City of Colton, Petitioner herein; that he signs and verifies the within Petition for said City pursuant to an authorizing resolution heretofore adopted by the City Council of said Petitioner: that he has read said Petition and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

Lyman H. Cozad
Lyman H. Cozad

Subscribed and sworn to before me this 28th day of March, 1958.

Elizabeth Davis,
Notary Public in and for San Bernardino County, State of California.
My Commission Expires May 13, 1961.

## UNITED STATES OF AMERICA
## BEFORE THE FEDERAL POWER COMMISSION

In the Matter of the City of Colton, California

vs.

Southern California Edison Company

Docket No. E-6821

Filed 9 June '58

## ANSWER OF SOUTHERN CALIFORNIA EDISON COMPANY

SOUTHERN CALIFORNIA EDISON COMPANY (hereinafter called "Edison") hereby files this Answer to the Petition of the CITY OF COLTON, CALIFORNIA (hereinafter called "Colton") on file herein and assigned Docket No. E-6821, seeking to have the Federal Power Commission institute an investigation, and in answer to the allegations thereof, admits, denies and alleges as follows:

### I

Edison admits the allegations contained in Paragraph 1 of said Petition.

### II

In answer to Paragraph 2 of said Petition, Edison admits that Colton is the owner and operator of an electric distribution system in the City of Colton. Except as herein

1686

expressly admitted, Edison has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 2 of said Petition, and placing its denial on that ground, denies generally and specifically each and every allegation contained in Paragraph 2 of said Petition.

III

In answer to Paragraph 3 of said Petition, Edison admits and alleges that Edison and Colton entered into a contract, dated October 1, 1945, authorized by the Public Utilities Commission (formerly Railroad Commission) of the State of California in its Decision No. 38461, dated December 10, 1945, in Application No. 27108; that said contract provided, among other things, that it was to be subject at all times to changes or modifications by said Commission; that said Commission in its Decision No. 50449, dated August 17, 1954, in Application No. 33952, required Edison to file a revised tariff schedule, designated Schedule R to be applicable to electric service to Colton under said contract from and after September 13, 1954; that said Commission in its Decision No. 55703, dated October 15, 1957, in Application No. 38382 Amended, prescribed a revision of said Schedule R applicable to electric service to Colton under said contract from and after November 9, 1957; that said contract provided for a specified term of ten years and further provided that it would automatically continue from month to month thereafter until terminated by either party by written notice served on the other party; that said contract further provided that Colton would purchase during its term all of its electrical requirements from Edison. Except as herein expressly admitted or alleged, Edison denies generally and specifically each and every allegation contained in Paragraph 3 of said Petition.

## IV

In answer to Paragraph 4 of said Petition, Edison admits that it is a corporation organized and existing under the laws of the State of California and that it is a licensee under Part I of the Federal Power Act and that it is engaged in the business of generating, transmitting, distributing and selling electric energy in public service in the central and southern portions of the State of California. Except as herein expressly admitted, Edison denies generally and specifically each and every allegation contained in Paragraph 4 of said Petition.

## V

In answer to Paragraph 5 of said Petition, Edison admits and alleges that pursuant to the contract as authorized, changed and modified by decisions of the Public Utilities Commission of the State of California described in Paragraph III hereof, Edison sells electric energy to Colton for resale in the City of Colton. Except as expressly herein admitted and alleged, Edison denies generally and specifically each and every allegation contained in Paragraph 5 of said Petition.

## VI

In answer to Paragraph 6 of said Petition, Edison admits that at all times since October 1, 1945, the date of the execution of the aforesaid agreement with Colton, electric energy has been and now is, from time to time, both generated at and transmitted from the Hoover Dam and Power Plant, located in the States of Arizona and Nevada, by Edison as an Operating Agent of the United States and transmitted by Edison from the State of

Nevada into California, pursuant to arrangements entered into by the United States and Edison under the provisions of the Boulder Canyon Project Act, approved December 21, 1928, and the Boulder Canyon Project Adjustment Act, approved July 19, 1940. Except as herein expressly admitted, Edison denies generally and specifically each and every allegation contained in Paragraph 6 of said Petition. In this connection, Edison alleges that all electric energy generated by Edison is generated within the State of California; that electric energy is generated by the United States at the Hoover Power Plant, with Edison acting as its Operating Agent under the legislation referred to above; that Edison transmits from the State of Nevada electric energy to which it is

entitled generated at Hoover Power Plant over its transmission lines from a substation owned by the United States in the State of Nevada to a point of connection to Edison's interconnected primary transmission system at its Chino Substation in the State of California; that Edison also receives in California from a transmission line owned and operated by The Metropolitan Water District of Southern California electric energy generated at Hoover Power Plant under a contract, dated May 31, 1945, which the United States and others entered into pursuant to said Boulder Canyon Project Act and Boulder Canyon Project Adjustment Act; that all electric energy sold by Edison to Colton is delivered to Colton over facilities used in local distribution which are a part of Edison's local distribution system delivering electric energy at standard distribution voltages to its customers, including Colton; that at all times herein mentioned the deliveries of electric energy to Colton by Edison have been substantially less than the electric energy then being generated by facilities of Edison located in the State of California connected to said local distribution system.

## VII

In answer to Paragraph 7 and 8 of said Petition, Edison denies generally and specifically each and every allegation contained in said paragraphs, except that Edison admits that it has never filed the contract of October 1,

1945 referred to in Paragraph III hereof with the Federal Power Commission.

## VIII

In answer to Paragraphs 9 and 10 of said Petition, Edison denies generally and specifically each and every allegation contained in said paragraphs, except that in this connection Edison admits and alleges that the Public Utilities Commission of the State of California in its Decision No. 38461, dated December 10, 1945, in Application No. 27108, authorized Edison to furnish electric service to Colton pursuant to the contract dated October 1, 1945 hereinabove referred to; that said Commission in its Decision No. 50449, dated August 17, 1954, in Application No. 33952, required Edison to file a revised tariff schedule, designated Schedule R, to be applicable to electric service to Colton under said contract from and after September 13, 1954, and that electric service was rendered to and charges collected from Petitioner pursuant to said decision; that the said Commission in its Decision No. 55703, dated October 15, 1957, in Application No. 38382 Amended, prescribed a revision of said Schedule R applicable to electric service to Colton under said contract from and after November 9, 1957, and that electric service has been and is being rendered to and charges collected from Colton pursuant to said decision and that heretofore Colton has made its payments for electric service rendered since

1691

November 9, 1957 under protest; that as set forth above, at no time referred to in the Petition has there been any absence of state regulation of the charges for service made by Edison to Colton or of the rates charged for such service, but, on the contrary, at all times mentioned in said Petition the Public Utilities Commission of the State of California has had and exercised jurisdiction and control over such rates, charges and service, and the exercise of such jurisdiction and control by the Public Utilities Commission of the State of California has been valid and effective.

## IX

As a further and separate answer to said Petition, Edison denies that the sale of electric energy to Colton, pursuant to the contract and decisions of the Public Utilities Commission of the State of California described in Paragraph III hereof, is or ever has been a sale of electric energy at wholesale in interstate commerce subject to the jurisdiction of the Federal Power Commission.

## X

As a second, further and separate answer to said Petition, Edison alleges that said Petition fails to allege facts sufficient to constitute any grounds for the relief requested or for any action within the jurisdiction of this Commission.

WHEREFORE, Southern California Edison Company prays

1692

that the Federal Power Commission decline to institute the investigation prayed for and that said Petition be dismissed for lack of jurisdiction of the Federal Power Commission to act thereon and for such other and further relief as may be proper.

DATED June 6, 1958.

SOUTHERN CALIFORNIA EDISON COMPANY
By Robert P. O'Brien
Vice President

ROLLIN E. WOODBURY
HARRY W. STURGES, JR.
JOHN R. BURY
By Rollin E. Woodbury
Attorneys for
Southern California Edison Company
Post Office Box 351
Los Angeles 53, California

1693

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss

ROBERT P. O'BRIEN, being first duly sworn, deposes and says: That he is a Vice President of Southern California Edison Company; that he has read the foregoing Answer to Petition and knows the contents thereof; that the same are true to the best of his knowledge and belief.

Robert P. O'Brien

Subscribed and sworn to before me this 6th day of June, 1958.

(Seal) OLETA L. VIERSEN
Notary Public in and for the County
of Los Angeles, State of California
My Commission Expires March 26, 1962

1694

# CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the following named parties of record in this proceeding, by mailing a copy thereof properly addressed to each of the parties named or, where indicated, to the attorneys of record of a party named:

| Parties | Attorneys Served |
|---|---|
| City of Colton, California | John W. Cragun, Esquire<br>Wilkinson, Cragun & Barker<br>744 Jackson Place, N.W.<br>Washington 6, D.C. |

Dated at Los Angeles, California, this 6th day of June, 1958.

John R. Bury

Of Counsel for
Southern California Edison Company

1709

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

| | |
|---|---|
| In the Matter of City of Colton, California<br>vs.<br>Southern California Edison Company. | Docket No. E-6821 |

## MOTION TO DISMISS BY SOUTHERN CALIFORNIA EDISON COMPANY

SOUTHERN CALIFORNIA EDISON COMPANY (hereinafter referred to as Edison) respectfully moves that the Petition for an Order filed by the CITY OF COLTON (hereinafter referred to as Colton) on or about May 9, 1958 and seeking the institution of a Commission investigation of Edison's sales to said City, be dismissed. Edison respectfully submits that under the law and under the facts there is no basis for holding a hearing in this matter and that dismissal should therefore be ordered without hearing.

## THE PERTINENT FACTS

The pertinent facts are set forth in detail in the affidavit of Mr. Robert P. O'Brien, Vice President of Southern California Edison Company attached hereto and

1710

made a part hereof. Such facts may be summarized as follows:

Edison has supplied Colton with all of its electrical requirements under various arrangements since 1905, the most recent of which is the contract of October 1, 1945. Colton, which has no generating facilities, purchases this energy for its own use and for resale.

Edison generates electric energy at various plants in California and also purchases energy from Hoover Power Plant owned by the United States and located in Nevada and Arizona. Edison operates an interconnected transmission and distribution system throughout its service area, all of which is in California. Edison delivers energy to Colton for resale at 4 kv from Edison's local distribution system. None of the energy supplied by Edison to Colton can be demonstrated to come from any source out of California. The Public Utilities Commission of the State of California has, at all times referred to in Colton's Petition for an Order, regulated Edison's sales to Colton and in pursuance of that regulation authorized the performance of the 1945 contract referred to above and, in 1954 and 1957, respectively, established revised rates under said contract.

Colton at no time questioned the California Commission's jurisdiction until the filing of the Petition for an Order herein. At all times prior to filing of said Petition, Colton affirmatively took the position that such sales were within the California Commission's jurisdiction. Colton has never sought judicial review of any of the orders of the California Commission with respect to such sales.

The Federal Power Commission has never required Edison to file said 1945 contract or the rate changes thereunder. The question of Federal Power Commission jurisdiction was raised by this commission on its own initiative in 1953 and, after thorough inquiry into the facts and the law, this commission refrained from any further action on the subject.

Upon all of the foregoing facts, as more fully set forth in the affidavit referred to above, Edison respectfully submits that under the law the Federal Power Commission must grant Edison's Motion to Dismiss Colton's Petition for an Order herein, and in that regard Edison sets forth the following well-established legal and equitable points.

1712

## AUTHORITIES SUPPORTING EDISON'S MOTION TO DISMISS HEREIN

### I. The Federal Power Commission Should Deny Colton's Petition for an Investigatory Order on the Ground that Edison's Sales to Colton do not Involve Sales for Resale in Interstate Commerce Within the Power Commission's Jurisdiction.

### A. Even if it were Assumed, which Edison Denies, that Hoover Power can be said to be Sold by Edison to Colton, the Terms of the Boulder Canyon Project Act Preclude Federal Power Commission Jurisdiction.

As set forth in the affidavit of Robert P. O'Brien, and more particularly in Exhibit C attached thereto, the question of the Power Commission's jurisdiction, where it is assumed that Hoover energy reaches Colton, was fully inquired into in 1953-4. At that time the Commission stated in its letter of August 31, 1953 to Edison"

> " . . . your sales to . . . Colton appear to include energy purchased from the U. S. Bureau of Reclamation, which energy is generated in Nevada. Accordingly the agreements for such sales . . . should be filed with the Commission as rate schedules in accordance with Section 205 of the Federal Power Act . . ."

This letter was followed in due course by Edison's brief letter response of September 17, 1953 which assumed that

Hoover power might be involved in sales to Colton. Such letter advised that because of Section 6 of the

Boulder Canyon Project Act (45 Stat. 1057) and also because of the absence of an "Attleboro Gap" situation, Edison did not regard the sales in question to fall within Power Commission jurisdiction. The Power Commission by letter of November 2, 1953 debated this position insofar as the effect of the Boulder Canyon Project Act was concerned and renewed its request for rate filing. Finally by a 16-page letter memorandum of March 24, 1954 Edison set forth in explicit detail the facts and law which demonstrated the correctness of Edison's position. Such letter ended the interchange of correspondence and ended any further request that Edison file rates for sales to Colton.

Since the aforementioned correspondence is set forth verbatim in Exhibit C to said Affidavit, and since such correspondence sets forth the legal reasoning in full, the Commission's attention is respectfully referred thereto. It will be appropriate, however, to quote here the following excerpts from Edison's March 24, 1954 letter memorandum:

> "These contracts also demonstrate conclusively that the Hoover Project contracts executed pursuant to the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act and the regulations promulgated by the Secretary pursuant to said Acts so far as Edison is concerned are contracts with the United States of America expressly providing for the generation, transmission and distribution of energy for sale and use by Edison in California.

* * *

"The Boulder Canyon Project Act and the contracts drawn thereunder were based upon the understanding that the power was being sold by the United States for transmission into California and for sale in any manner determined upon by Edison within the State of California subject to the jurisdiction of the Public Utilities Commission of California.

• • •

"The regulatory authority granted to the Secretary (of the Interior) as to the Boulder Project under Section 6 was . . . that which the Federal Power Commission now claims."

Since, after receipt of this letter memorandum, Edison received no further communication from the Commission, Edison concluded, as it obviously had good reason to do, that the Commission agreed with Edison's understanding of the law. If it be assumed for argument that Hoover Power reaches Colton, then it is respectfully submitted that Edison's legal memorandum of March 24, 1954 furnishes a complete answer to Colton's contentions and that its Petition should be dismissed.

### B. No Interstate Energy is Sold to Colton By Edison

The law is of course perfectly clear that the Power Commission has no jurisdiction over electric sales for resale unless the energy is interstate in character. Federal Power Act, Section 201 (a) (b). Therefore, it is not surprising that Colton, in its Petition for an Order, alleges that it believes an investigation will show that

1715

Hoover energy is involved.

While such an allegation can be easily made, we submit that Colton cannot establish by competent evidence that interstate energy is sold to Colton. In this regard reference is made to the attached Affidavit.

## II. Even if it be Assumed that the Electric Energy Sold to Colton Included Hoover Power, and that the Boulder Canyon Project Act does not Preclude Federal Power Commission Jurisdiction, Nevertheless the Federal Power Commission has no Jurisdiction over the Sales of Electric Energy to Colton because those Sales are not Within the Attleboro Gap.

The provisions of Part II of the Federal Power Act were enacted only after a long series of Supreme Court Decisions in which it was established that, absent federal statute, a state could constitutionally regulate interstate sales of energy provided such sales were a matter of essentially local as opposed to national interest. *The Minnesota Rate Cases* (1913) 230 U.S. 351, 57 L.ed. 1511; *Mill Creek Coal & Coke Co. v. Public Service Commission,* (1919) 100 S.E. 557, P.U.R. 1920A; *Manufacturers' Light & Heat Co. v. Ott,* (1914) 215 Fed. 940; *Pennsylvania Gas Co. v. Public Service Commission,* (1920) 252 U.S. 23, 64 L.ed. 434; *Public Utilities Commission v. Landon,* (1919) 249 U.S. 236, 63 L.ed. 577; *Missouri ex rel. Barret v. Kansas Natural Gas Company,* (1924) 265 U.S. 298, 68 L.ed. 1027. Those

1716

decisions further established that the principal criterion of national interest was whether the interests of more than one state were involved.

Since the facts in the present case demonstrate without question that only the interests of the State of California and its citizens are involved, it is clear that, absent Part II of the Federal Power Act, these sales would be subject to the regulation by the State of California. Let us now consider the effect of the enactment of Part II of the Federal Power Act.

Part II of the Federal Power Act does not divest the states of their jurisdiction over matters of purely local concern affecting interstate commerce nor clothe the Federal Power Commission with such jurisdiction. The relevant portions of Part II of the Federal Power Act are Section 201(a) and (b).

This statutory language on its face purports to subject to federal regulation only those "sales of such (electric) energy at wholesale . . . which are not subject to regulation by the States." That such was the intention of Congress is confirmed by a study of the legislative history of the act, which is briefly summarized in the opinion of the United States Supreme Court in *Connecticut Light & Power Co. v. Federal Power Commission,* (1945) 324 U.S. 515, 89 L.ed. 1151 at pages 1158 et seq. In that case the Connecticut company took

delivery in Connecticut of power which "regularly, frequently and for substantial periods of time included electric energy in substantial amounts transmitted from Massachusetts". The company was comprehensively regulated by the Connecticut Public Utilities Commission and it served approximately 660,000 consumers in 107 towns directly, *in addition to supplying substantially all of the electric energy to local companies in Connecticut for resale in communities having a population of 130,000.* The case before the Supreme Court involved an assertion of jurisdiction on the part of the Federal Power Commission to regulate the accounting practices of the Connecticut company. By the terms of the statute, the jurisdiction of the Commission would have to be grounded on the ownership by the Connecticut company of facilities for the transmission of electric energy in interstate commerce, or for the sale of electric energy in interstate commerce. It is significant that in this case the Commission does not appear to have put forward in support of its assertion of jurisdiction the argument that the sales for resale by the Connecticut company to the local companies serving 130,000 consumers were in interstate commerce and not within the jurisdiction of the state commission but subject to Part II of the Federal Power Act. We submit that the reasons for ab-

staining from that extreme and untenable position are stronger in this case than they were there. The only out-of-state electricity obtained by Edison is completely regulated by the federal government and all other activities of Edison are thoroughly and effectively regulated by the California Public Utilities Commission.

Furthermore, in the *Connecticut* case Justice Jackson, speaking for the court, stated that the jurisdiction of the Federal Power Commission depended upon whether the Connecticut company owned facilities that were used in the transmission or sale of interstate power *and* were not facilities used in local distribution. From his opinion it is clear that regardless of the amount of interstate power which may be found in the facilities of a local distribution system, such a system is subject only to state and not to federal regulation.

Even if it be assumed that the electric energy delivered to Colton included energy generated at Hoover Power Plant, that energy reaching Colton does so only through the local distribution facilities of Edison. The manner in which Colton is served is set forth in the attached affidavit and we submit that Edison's 12 kv distribution system which serves Colton along with many other customers constitutes without question local distribution facilities.

1719

It cannot be questioned that the activities of a utility engaged in the distribution of electric energy within a single state are a matter of essentially local concern subject to the regulation of the authorities of that state. If the electric energy which is distributed comes from out-of-state then its import price may be beyond state jurisdiction and then only does an Attleboro Gap open up which is subject to federal regulation. Normally, that federal regulation would be carried out by the Federal Power Commission under the Federal Power Act but in this case the Congress has entrusted the federal regulatory powers to the Secretary of the Interior under the Boulder Canyon Project Act, enacted subsequent to the *Attleboro* decision. There is no gap here and, even if there were, it would have to occur in the act of acquisition of the Hoover energy by Edison, and not in sales by Edison to Colton.

1720

## III. The Decision of the California Public Utilities Commission on the Factual Issues upon which its Jurisdiction has been Based is Res Judicata and is not Subject to Collateral Attack before this Commission.

The pertinent facts which invoke the application of this legal proposition have been set forth hereinabove, but it

(1720)

will be convenient to summarize them as follows: At the time when Edison and Colton entered into the October 1, 1945 contract, Edison submitted such contract to the California Commission through formal application. The California Commission issued its decision authorizing the contract and the rates set forth therein. Such act was necessarily premised upon a determination of jurisdiction. Thereafter, in 1954 the California Commission, upon application of Edison and after formal hearing in which the factual situation was adduced respecting the power sources of Edison including Hoover power, issued a formal decision prescribing rate changes for Edison's sales to Colton. Here again the California Commission's action was necessarily premised upon its finding of jurisdiction in the light of the facts. Finally in 1957 the California Commission, upon application of Edison and after formal hearing in which the factual situation was again adduced respecting the power sources of Edison including Hoover power, issued a formal decision prescribing rate changes for Edison's sales to Colton. Here for the third time the California Commission's action was necessarily premised upon its finding of jurisdiction in the light of the facts.

1721

In each of the three proceedings referred to Colton was given full opportunity, to the same extent as in a court of law, to present evidence, to cross-examine and to argue any relevant issue, including the issue of jurisdiction. At no time did Colton question the California Commission's determination of jurisdiction.

Upon these facts, the principles of res judicata apply to bar Colton's present contention that this Commission, and not the California Commission, has jurisdiction over the sales in question.

### A. The Doctrine of Res Judicata Applies to Administrative Tribunals, Including Determinations of the California Commission.

That the doctrine of res judicata applies to administrative tribunals was long ago decided in *Butte Anaconda & Pac. Ry. v. U.S.* (1933) 290 U.S. 127, 78 L.ed. 222, with reference to a decision of the interstate Commerce Commission. A more recent decision to the same effect is *Seatrain Lines v. Pa. R. Co.* (3 Cir. 1953) 207 F.2d 255 wherein the court said at page 259:

> "... as concerning this law suit, we think the question of Commission power over car withholdings by railroads not in through route relationship with Seatrain is foreclosed by the rulings already made by the Commission itself. Normally, if such an issue, albeit concerning the jurisdiction of the tribunal itself, has once been decided between the parties by a competent court, another court will not permit the matter to be relitigated between the same parties in another case ... This rule of repose is doubly justified in the rare case in which the party who won on an issue in the first case attempts to obtain a contrary ruling in the second litigation, as the railroads are trying to do here ... *The present case does present additional consideration*
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> *that the first decision was by the Interstate Commerce Commission, an administrative tribunal, rather than a court. But in the circumstances that should make no difference.* There was a contested proceeding before the Commission, with decision depending upon the present issue and the present parties taking

**(1722)**

> opposite sides upon it. *Res judicata* should and does apply. Sunshine Anthracite Coal Co. v. Adkins, 1940, 310 U.S. 381, 60 S.Ct. 907, 84 L.ed. 1263; Dennison v. Payne, 2 Cir., 1923, 293 F. 333; Ogino v. Black, 1952, 304 N.Y. 872, 109 N. E. 2d 884; cf. Chicago, R. I. & P. Ry. Co. v. Schendel, 1926, 270 U.S. 611, 46 S.Ct. 420, 70 L.ed. 757." (Emphasis added.)

Under California Law, decisions of the Public Utilities Commission are given res judicata effect. *People v. Western Air Lines* (1954) 42 Cal.2d 621, 632, 268 P.2d 723, 729.

B. A decree may be Res Judicata even when it is Subsequently Established that the Body Rendering the Decree has no Jurisdiction to Hear the Cause or to Enter the Decree.

In a number of United States Supreme Court decisions this principle has been established upon the ground that the policy underlying the doctrine of res judicata outweighs the policy against permitting a tribunal to act beyond the scope of its jurisdiction. Thus in *McCormick v. Sullivant* (1825) 10 Wheat. 192, 6 L.ed. 300, a judgment by a federal court was given res judicata effect despite the fact that diversity, which was the only basis for federal jurisdiction, was subsequently proven not to exist. To similar effect is *Des Moines Nav. & R. Co. v. Iowa Homestead Co.* (1887) 123 U.S. 552. The case of *Dowell v. Applegate* (1894) 152 U.S. 327, applies this principle to a federal question case. Thus

1723

even where the first tribunal was wrong as a matter of law in assuming jurisdiction on the ground that the action was one arising under the laws of the United States, its judgment will have res judicata effect. In *Stoll v. Gott-*

*lieb* (1938) 305 U.S. 165, a bondholder in a bankruptcy proceeding might have had an order of the bankruptcy court set aside for want of jurisdiction. Having failed to do so, he was held barred in a subsequent state suit on principles of res judicata. In *Chicot Co. Drainage Dist. v. Baxter State Bank* (1940) 308 U.S. 371, a judgment granted under a jurisdictional statute which the Supreme Court in other litigation afterwards held unconstitutional, was given res judicata effect despite the fact that the issue of constitutionality had not been litigated in the first case. On this general subject, see Restatement on Judgments (American Law Institute, 1942) Section 10.

### C. Once Jurisdiction has been Determined by a Tribunal under Circumstances where Jurisdiction between State and Federal Government Depends upon Fact-Finding in a Borderline or Twilight Zone, the Parties are Bound by that First Determination.

This principle, often lost sight of, has been established by the United States Supreme Court in *Davis v. Department of Labor* (1942) 317 U.S. 249, involving the shadow land of state versus federal jurisdiction respecting claims of maritime employees under state compensation acts, on the one hand, and the federal Longshoremen's and Harbor Workers' Act, on the

other. See also *Hahn v. Ross Island Sand & Gravel Co.* (1959) 3 L.ed. 2d 292; *Dunleavy v. Tietjen & Long Dry Docks* (1951) 17 N. J. Super. 76, 85 A.2d 343, affd. 20 N. J. Super. 468, 90 A.2d 84, cert. dnd. 10 N. J. 343, 91 A.2d 448.

This principle appears to be particularly apposite under the circumstances of the present case where numerous conflicting contentions might be made respecting the flow of electric energy received by Edison from outside California, and where accordingly the jurisdictional determination might depend upon shadowy, elusive "twilight zone" factual considerations.

## IV. Even if it were Assumed that the Federal Power Commission has Jurisdiction over the Sales to Colton, Colton is Estopped from Making the Plea Contained in its Petition for an Order.

As set forth in the introductory factual presentation and in the attached Affidavit, Colton by numerous affirmative acts during the entire period covered by the sales in question, acceded to the jurisdiction of the California Commission and indeed through its counsel in a formal proceeding before that Commission specifically declared that it did not wish to cast any doubt upon such jurisdiction. Indeed, Colton's every act, until the very moment of filing its Petition for an Order herein, gave recognition and support to the jurisdiction of the California Commission. Edison has continuously acted, and has perpetuated its contract with

Colton, in reliance upon such position of Colton. Therefore, upon well established principles of equitable estoppel, Colton is barred from gaining any advantage to Edison's detriment. This is particularly true since Colton at all times had full knowledge of the factual situation and since Edison might have taken various steps to protect itself, as for instance termination of its 1945 contract upon the conclusion of the 10-year term, had Colton contended for Federal Power Commission jurisdiction.

In short Colton is now estopped, upon equitable principles, to challenge California Commission jurisdiction, and the rate changes prescribed by that Commission. It is estopped from denying that its payments to Edison were voluntary, and it is estopped from asserting any right of refund for amounts collected above the commencing rates prescribed in the 1945 contract.

The application of the doctrine of equitable estoppel in a situation of this kind is established by the authorities.

In the case of *So. Buffalo Ry. Co. v. Ahern*, 344 U.S. 367, an injured employee sought an award from the New York Workmen's Compensation Board in 1945. The Railway contested the claim, but did not judicially appeal the award granted. It paid the award, as well as all awards decreed in three fully contested proceedings subsequently brought before the Board by Ahern. After Ahern's death in 1949, when his widow applied to the Board for compensation, the Railway for the first time challenged the Board's jurisdiction and invoked the FELA. The statute of limitations under that Act had already run. The New York Court of Appeals held the Railway estopped to challenge state jurisdiction, and the Supreme Court affirmed its judgment. Although finding Ahern to have been within the terms of the federal act, and while admitting that the federal act was designed to displace state legislation purporting to apply, the court permitted the application of the New York statute on the rationale that the state board might be utilized as a "local umpire" where the parties agreed and no overreaching or fraud appeared. As the Railway had had full knowledge of all pertinent facts, the advice of competent counsel, and had appeared and contested before the Board and acquiesced in its decisions, it was estopped from later challenging the Board's jurisdiction. All the pertinent

(1726)

facts of this case are to be found in the present situation. Also apposite in this connection are the cases cited in Section III B supra concerning collateral attack.

1727

## V. The Federal Power Commission Should not, in View of all the Equities, Entertain Colton's Motion.

In addition to the facts and principles developed above, upon which Colton should be barred from requesting that the Commission assume jurisdiction, it is submitted that this Commission should not now upset its previous exercise of a sound administrative discretion.

With full knowledge of all facts pertinent to jurisdiction, and of the legal arguments relied upon by Edison in 1954 this Commission declined to act. From this Edison could only reasonably believe that the Commission had acceded to Edison's position. Because of these circumstances, Edison failed to take steps to protect itself which it must otherwise reasonably have taken, and which it is no longer in a position to take.

In view of these equities, and in furtherance of a sound public policy, the Commission should again decline to assert jurisdiction and should refuse to entertain Colton's complaint.

## CONCLUSION

It is respectfully submitted that in the light of the several legal and equitable arguments hereinabove set forth, this Commission should deny Colton's Petition for an Order and should dismiss the proceeding in accordance with Edison's Motion herein. It is respect-

1728

fully submitted that the material contained herein, together with the supporting Affidavit and exhibits renders hearing unnecessary.

Respectfully submitted,

SOUTHERN CALIFORNIA EDISON
COMPANY

By Robert P. O'Brien
Robert P. O'Brien
Vice President

ROLLIN E. WOODBURY
HARRY W. STURGES, JR.
JOHN R. BURY
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310 Sansome Street
San Francisco 4, California
Of Counsel

1729

COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

Robert P. O'Brien, being first duly sworn deposes and says: that he is a Vice President of Southern California Edison Company; that he has signed the foregoing Motion to Dismiss; that he is authorized so to do; that he has read the foregoing Motion and is familiar with the contents thereof; and that the matters and things therein

(1729)

set forth are true and correct to the best of his information, knowledge and belief.

Robert P. O'Brien
Robert P. O'Brien

Subscribed and sworn to before
me this 30 day of November, 1959.
Barbara Rowe

Barbara Rowe, Notary Public
in and for said County and State
My Commission Expires June 14, 1962
(SEAL)

1730

## UNITED STATES OF AMERICA
## BEFORE THE FEDERAL POWER COMMISSION

In the Matter of City of Colton,
California
vs.
Southern California Edison Company

Docket
No. E-6821

## AFFIDAVIT
## OF
## ROBERT P. O'BRIEN

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Robert P. O'Brien, being first duly sworn, deposes and says: that he is a Vice President of Southern California Edison Company; that in the discharge of his duties he is generally familiar with the subject matter of this affidavit set forth below, and that as to those portions with which he is personally familiar he asserts the truth thereof, and as to those portions with which he is not personally familiar he asserts the truth thereof upon information and belief.

By written agreement entered into October 1, 1945 Edison agreed to furnish to Colton, and Colton agreed to purchase from Edison, for a period of ten years from that date, all of Colton's electric energy requirements, the bases for the charges for such energy being set forth in said contract. Such charges were subject to lower rates at Colton's option in the event Edison should during the term of the contract have in effect a schedule establishing lower rates applicable to municipalities operating under conditions similar to those of Colton, were also subject to such changes or modifications as the Railroad Commission (now Public Utilities Commission) of the State of California might from time to time direct in the exercise of its jurisdiction. It was provided in the contract that upon expiration of the ten-year period, the contract would continue automatically from month to month until terminated by either party upon written notice. It was further provided that the contract was to be filed with the California Commission and that the Rules and Regulations of Edison on file from time to time with that Commission were to be controlling so far as applicable to the subject matter of the contract.

Pursuant to such agreement Edison has continuously since October 1, 1945 furnished, and Colton has accepted, all of the electrical energy requirements of said City, and neither party has at any time taken action to terminate the agreement.

Colton requires electrical energy for its own use and for the operation of its electric distribution system serving consumers within the city limits or in the vicinity thereof, as more specifically set forth in said agreement.

Colton has no generating facilities of its own. It has purchased its entire electrical requirements, both for its own use and for resale, from Edison or its predecessors under arrangements, modified from time to time, since 1905. Such sales have continuously been under the jurisdiction of, and regulated by, the California Public Utilities Commission (formerly Railroad Commission) since the creation of that body in its present form by the California constitutional and statutory provisions of 1911-12.

Edison is engaged in the generation, purchase, transmission, distribution and sale of electric energy in portions of central and southern California, excluding the City of Los Angeles and certain other cities. Its service area, all of which is in California, comprises approximately 14,252 square miles and had an estimated population in April, 1958 of 4,637,000 (1950 U.S. Census showed approximately 2,725,000). In 1957 Edison had 1,456,578 retail customers to whom it sold 12,888,101,622 kwh for $213,504,094. In that year Edison sold to Colton for resale 22,131,200 kwh for $184,282.

Edison generates electric energy at twenty-five hydroelectric generating plants and nine steam electric generating plants, all of which it owns and operates and all of which are located in California. Hoover Power Plant is owned by the United States and located partly in Arizona and partly in Nevada. Edison operates certain of the units of Hoover Power Plant as agent of the United States. Pursuant to contracts with the United States and with the

Metropolitan Water District of Southern California (a municipal corporation) Edison receives a portion of the energy generated at Hoover Power Plant.

Edison derives energy from Hoover Power Plant, but it cannot be said on sound engineering principles that any of

such energy can be traced to Colton. While a 220 kv line extends from Hoover Power Plant to Davis Power Plant (located in Arizona and owned by the United States) and thence to Parker Dam Power Plant in California and thence to the Edison system as aforesaid, no energy generated at Davis Power Plant reaches the Edison system in California. Even if it were assumed, which Edison denies, that certain of the energy it received contained "components" of energy generated at Davis Power Plant such receipts occurred on such infrequent occasions and in such small amounts as to be disregarded as negligible and in any event have long since ceased.

Edison owns and operates an extensive 220 kv transmission system interconnecting its large hydroelectric generating plants in central California, Hoover Power Plant, its steam electric generating plants in southern California and its 220 kv transmission substations in its service area. All of that system except for the transmission lines from Hoover Power Plant to the State border are located in California. Edison also owns and operates a large and wholly intrastate 66 kv transmission system interconnecting the low sides of its 220 kv transmission substations and some of its smaller hydroelectric generating plants with its many distribution substations located throughout the service area. In most cases these distribution substations transform energy from 66 kv to 12 kv and in some instances to 16 kv. From these distribution substations energy is distributed locally to Edison's consumers. At Edison's Colton Substation energy is transformed from 66 kv to 12 kv at which voltage energy

its distribution locally to Edison's customers, including the City of Colton. Edison delivers the energy which it furnishes to Colton for resale at the City of Colton Substation, owned and operated by Edison, the delivery being at 4 kv. Edison normally provides such energy through two 12 kv distribution circuits owned by it and leading to the City of Colton Substation as aforesaid. One of said 12 kv circuits is used by Edison to serve domestic customers of Edison before reaching Colton, and the other of said 12 kv circuits is used by Edison to serve a large industrial customer of Edison before reaching Colton Substation. Edison also furnishes electric service to pumps at several city-owned wells. These retail pumping accounts are located outside of the City limits and are served from other Edison distribution circuits.

To an extent the local distribution facilities owned and operated by Colton are paralleled within the city boundaries of Colton by Edison's own local distribution facilities inasmuch as Edison serves certain customers located within such city directly. These cases generally have arisen where Colton was not able to provide the necessary voltage to serve such customers and requested Edison to do so. As mentioned above, two 12 kv circuits, in addition to supplying other Edison customers, normally supply the entire requirements of the City of Colton Substation where energy is transformed from 12 kv to 4 kv for delivery to Colton.

The Public Utilities Commission of the State of California has at all times referred to in Colton's Petition for an Order, exercised regulatory jurisdiction over Edison's sales to Colton, pursuant to California Public Utilities

Code, (Cal. Stats. 1951, ch. 764, as amended) and more particularly Sections 451, 453, 454 and 489 thereof. As required by Section 489 of said Code, the aforementioned 1945 contract between Edison and Colton was duly filed with the said California Commission pursuant to the California Commission's Decision No. 38461 issued December 10, 1945, in application No. 27108 and pursuant to such contract Edison proceeded to charge, and Colton paid, without protest, the rates set forth therein. Such rates continued in effect until changed pursuant to the California Commission's order in Decision No. 50449, dated August 17, 1954, in Application No. 33952, reported in 53 Cal. PUC 385. That decision required Edison to file a revised tariff schedule, designated Schedule R, to be applicable to electric service to Colton under the aforesaid contract from and after September 13, 1954. Such changed rates were charged by Edison, and paid without protest by Colton, until further modified by the California Commission's Decision No. 55703, dated October 15, 1957 in Application No. 38382 Amended, reported in 55 Cal PUC 743. That decision required Edison to file a revised Schedule R. to be applicable to electric service under the aforesaid contract from and after November 9, 1957. Such modified rates have been charged and collected, and are now being charged and collected, by Edison, pursuant to said Decision.

Colton at no time questioned the California Commission's jurisdiction until it filed its Petition for an Order herein which was after the California Commission's 1957 rate order in Decision 55703 as aforesaid had been rendered and the time gone by during which any jurisdictional question might have been raised by petition for rehearing or court review. On the contrary, Colton at all times affirmatively took the position that such sales were within the California Commission's jurisdiction. The first such affirmative act by Colton during the period referred to in Colton's Petition for an Order was its execution of the 1945 contract with Edison as aforesaid in which the parties agreed that such contract was to be subject to such changes as the California Commission might, within the exercise of its jurisdiction, direct. Such contract was presented to the California Commission for approval in Application No. 27108 as aforesaid and Colton was duly served with a copy of such Application. Colton made no appearance and the contract it had entered into with Edison was duly approved by the California Commission in Decision No. 38461 as aforesaid.

At the time of Edison's rate proceeding leading up to Decision No. 50449 in 1954, as aforesaid, Colton appeared through counsel and presented both exhibits and testimony respecting the level of rates which it advocated as fair and reasonable. Colton in such proceeding affirmatively recognized the California Commission's jurisdiction in statements of counsel, appearing in the transcript of record, as set forth in Exhibit A attached hereto and incorporated herein. Once the California Commission had determined the level of rates in its aforesaid 1954 Decision No. 50449, Colton paid such rates without protest.

Subsequently at the time of Edison's rate proceeding before the California Commission leading up to

Decision No. 55703 in 1957 as aforesaid, Colton again appeared through counsel and presented both exhibits and testimony respecting the level of rates which it advocated as fair and reasonable. The evidence introduced during that hearing by Colton revealed that Colton expressly recognized at that time that its contract with Edison included the rates established by the California Commission in 1954 as aforesaid, which rates had superseded the earlier rate schedule set forth in the contract. Furthermore, during the course of that hearing, attorneys for Colton addressed a letter, dated March 11, 1957, to the Federal Power Commission in which they advised of the rate proceeding then pending before the California Commission involving rates to be charged to Colton by Edison and made inquiry whether Edison had rates on file with the Power Commission. The Power Commission replied in the negative by letter dated March 19, 1957. A copy of this exchange of letters is attached hereto and is incorporated herein as Exhibit B. At no time during that proceeding did Colton urge that the Federal Power Commission rather than the California Commission had jurisdiction. Furthermore, it did not petition for rehearing of Decision No. 55703 on the issue of jurisdiction and let the time go by during which it might have sought judicial review.

At no time has Edison filed with, or considered itself under any legal duty to file with, the Federal Power Commission the 1945 agreement with Colton as aforesaid, or the subsequent rate changes made effective by the California Commission. Nor has the Federal Power Commission ever required such filing. Prior to Colton's filing the Petition for an Order herein, the Federal Power Commission by letter of August 31, 1953 advised Edison that the sales to Colton appeared to fall within the Power Commission's jurisdiction. An interchange of correspondence

(1738)

ensued between the Commission and Edison, culminating in a 16 page letter memorandum by Edison, dated March 24, 1954, in which Edison set forth the pertinent facts and law which demonstrated conclusively in the opinion of the Company that the sales to Colton did not fall within Power Commission jurisdiction. Such memorandum opinion was, Edison believed, accepted as a complete answer to any claim of Power Commission jurisdiction since the Power Commission thereafter refrained from any further action on the subject. As noted hereinbefore the Commission was apprised from time to time of the fact that the California Commission had exercised and continued to exercise jurisdiction over the sales to Colton. The Commission has, at no time since the 1953-54 correspondence referred to above, sought to have Edison file rates for sales to Colton. Copies of the exchange of correspondence referred to hereinabove are

1739

attached hereto and incorporated herein as Exhibit C. The pertinent facts and law upon which Edison based its memorandum opinion are now, and have been at all pertinent times, the same as therein set forth.

Robert P. O'Brien
Robert P. O'Brien

Subscribed and sworn to before me this 30th day of November, 1959.

(SEAL)

Barbara Rowe
Barbara Rowe, Notary Public in
and for said County and State
My Commission Expires June 14, 1962

**Public Utilities Commission of the State of California, Motion to Dismiss, E-6821.**

1744

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION
Washington, D. C.

IN THE MATTER OF
CITY OF COLTON, CALIFORNIA,
vs.
SOUTHERN CALIFORNIA EDISON COMPANY.

Docket No. E-6821

## MOTION TO DISMISS

Comes now the Public Utilities Commission of the State of California, Intervenor herein, and moves the Federal Power Commission of the United States of America for an order dismissing the above-entitled matter without hearing upon the following grounds:

### I.

Colton must fail in proving an essential element of federal jurisdiction, to wit: interstate sales of energy, as no sound engineering principles exist for concluding that interstate energy is sold by Edison to Colton.

1745

### II.

Even assuming that interstate power from Hoover Dam is sold by Edison to Colton, jurisdiction for the regulation of those sales does not rest with the Federal Power Commission.

## III.

The sales of energy by Edison to Colton are matters of essentially local concern and do not affect any part of the United States other than the State of California.

## IV.

No regulatory gap exists for the exercise of any federal jurisdiction that may exist in the Federal Power Commission as sales of Hoover Dam energy to Edison are pursuant to contract with the United States Government and sales of energy to Colton by Edison are, and at all times herein have been, effectively regulated by Intervenor herein.

WHEREFORE, Intervenor respectfully prays that the Federal Power Commission deny the Petition For An Order filed herein by the City of Colton,

California and that the above-entitled matter be dismissed without the necessity of hearings herein.

Respectfully submitted,

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

DATED: December 4, 1959
San Francisco, California

/s/ William M. Bennett
William M. Bennett
Chief Counsel
/s/ Karl K. Roos
Karl K. Roos
Associate Counsel
Attorneys for the Public
Utilities Commission of the
State of California.

1747

## POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

### I.

The Federal Power Commission has no jurisdiction over sales of electric energy for resale unless the energy is interstate in character.

*Federal Power Act,* Section 201(a) (b).

No known methods exist for "tagging" or "tracing" any particular energy sources after commingling, therefore Colton must fail in proving an essential element of federal jurisdiction.

### II.

The energy sold to Edison at Hoover Dam is regulated by the Secretary of the Interior and therefore is not subject to regulation by the Federal Power Commission.

*Boulder Canyon Project Act,* Section 6.

### III.

In matters of essentially local concern the federal government should not exercise its regulatory powers even though it may be said that state regulation

1748

would affect interstate commerce.

*Gibbons v. Ogden,* 9 Wheat. 1, 196, 6 L. Ed. 23.

*The Minnesota Rate Cases* (1913) 230 US 351, 57 L. Ed. 1511.

*Mill Creek Coal & Coke Co. v. Public Utilities Commission* (1919) 100 S.E. 557, P.U.R. 1920A.

*Manufacturer's Light & Heat Co. v. Ott* (1914) 215 Fed. 940.

*Pennsylvania Gas Co. v. Public Service Commission* (1920) 252 U.S. 23, 64 L. Ed. 434.

*Connecticut Light & Power Co. v. Federal Power Commission* (1945) 324 U.S. 515, 89 L. Ed. 1151.

1749

## CERTIFICATE OF SERVICE

I, KARL K. ROOS, Associate Counsel for the Public Utilities Commission of the State of California and the People of the State of California in the within MOTION TO DISMISS, certify that on December 4, 1959, I served copies of the attached MOTION TO DISMISS on the following parties by mailing a copy thereof, properly addressed and stamped, to each of the parties named, or where indicated, to the attorney of record of the party named:

| Parties | Attorney(s) |
|---|---|
| City of Colton<br>Colton, California | John W. Cragun<br>Wilkinson, Cragun & Barker<br>744 Jackson Place, N.W.<br>Washington 6, D.C. |
| Southern California Edison Company | Rollin E. Woodbury<br>Harry W. Sturges, Jr.<br>John R. Bury<br>Southern California Edison Company<br>P.O. Box 351<br>Los Angeles 53, California |

Dated: San Francisco, California, December 4, 1959.

/s/ Karl K. Roos
Karl K. Roos
Associate Counsel for the Public
Utilities Commission of the
State of California

**Opinion No. 346, Opinion and Order Determining Jurisdiction, E-6821.**

1917

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

## OPINION NO. 346

| | |
|---|---|
| City of Colton, California<br>vs.<br>Southern California Edison Company, Operator | Docket No. E-6821 |

## OPINION AND ORDER DETERMINING JURISDICTION

Issued: July 31, 1961

(1915)

## EXHIBIT "B"

1918

## UNITED STATES OF AMERICA
## FEDERAL POWER COMMISSION

City of Colton, California

vs.

Southern California Edison Co.,
Operator

Docket
No. E-6821

## OPINION NO. 346

## APPEARANCES

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For California Public Utilities Commission
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William M. Bennett
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For the Staff of the Federal Power Commission
John S. Everett, Jr.
Washington, D. C.

1919

# UNITED STATES OF AMERICA
# FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Joseph C. Swidler and Howard Morgan.

| | |
|---|---|
| City of Colton, California<br>vs.<br>Southern California Edison Company | Docket<br>No. E-6821 |

## OPINION NO. 346

## OPINION AND ORDER DETERMINING JURISDICTION

(Issued July 31, 1961)

KUYKENDALL: Chairman

This proceeding involves the question whether the sale of electric energy by Southern California Edison Company (Edison) to the City of Colton, California, (Colton) for resale is subject to our jurisdiction under Section 201 of the Federal Power Act as a sale at wholesale in interstate commerce on the ground that the sale includes energy generated outside of California at the Hoover and Davis Dams on the Colorado River. The proceeding also concerns the question as to the effective rate in past years as the basis of accounting for overcharges. To the presiding examiner's decision issued March 14, 1961, holding that the Commission does not have jurisdiction, exceptions were filed by all participants: the Public Utilities Commission of California (PUC), the City of Colton, Edison, and the staff of the Federal Power Commission. Colton and the staff support FPC jurisdiction; Edison and the PUC oppose, and filed exceptions because they thought the examiner should have made further findings.

The proceedings arose upon the filing on May 9, 1958, by Colton of a petition requesting the Commission to institute an investigation and direct Edison to file a rate schedule pursuant to a 1945 contract with Colton, to cease charging rates other than those set forth in the 1945 contract and to make refunds. After motions to dismiss filed by Edison and the California Commission, pursuant to our order of August 28, 1959, hearings were held in December of 1959 and May of 1960, at which the following facts were developed.

As set out by the examiner, the City of Colton, which is located near San Bernardino, California, purchases its entire electrical requirements from Edison under a contract dated October 1, 1945. The contract was filed with the PUC, and it was shown that the PUC has exercised jurisdiction over all of Edison's rates with Colton. Edison markets electrical energy in central and southern California. It owns and operates a number of steam and hydro generating stations in California

1920

but also obtains energy from the Hoover, Davis, and Parker Dams on the Colorado River.

The Hoover Dam was constructed by the Bureau of Reclamation of the Department of the Interior under the authority of the Boulder Canyon Project Act.[1] It spans the Colorado River between the states of Nevada and Arizona. Its power plant contains 9 generators on the Arizona side of the river and 7 on the Nevada side. By contracts with the United States, specific generators are assigned for the use of the states of Arizona and Nevada, the City of Los Angeles, the Metropolitan Water District of California (MWD), Edison, and others. Seven percent of the total firm generating capacity of the Hoover Dam was allocated to Edison. This, in 1958, amounted to about 6 percent of the total electrical energy handled by Edison.

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[1] 45 Stat. 1056, 43 USCA § 617, *et seq.*

The Davis Dam is also the property of the United States and was constructed by the Bureau of Reclamation. It spans the Colorado River between Nevada and Arizona, about 60 miles downstream from the Hoover Dam. It contains 5 generators, all located in Arizona. The Parker Dam, also owned by the United States and constructed by the Bureau of Reclamation, spans the Colorado River between California and Arizona and is 150 miles downstream from the Hoover Dam. It includes 4 generators, all located in California.

The power plants of the Hoover, Davis, and Parker Dams are interconnected by a 220 kv transmission line owned by the United States through the Bureau of Reclamation. Both Edison and MWD have facilities which are connected with this 220 kv system. MWD lines from Hoover and Parker interconnect at MWD's Camino switching station in California and extend to a connection with Edison's 220 kv line at Hayfield in California. From Hayfield Edison's line extends in a westerly direction to its Highgrove substation from which connection is made through various stepdown transformers with the City of Colton and with other customers, residential and commercial. Edison, itself, owns and operates two 220 kv lines which extend from Hoover, in Nevada, to Edison's Chino substation in California, located 15 miles west of Highgrove. Edison's Highgrove and Chino substations are interconnected with 220 kv lines.

There are three possible routes for out-of-state energy to reach the City of Colton. The first path is from Hoover over the MWD line to the Camino switching station to the interconnection with Edison at Hayfield and thence to

Edison's Highgrove substation and to Colton through Edison's substations. The second route is from Hoover to Davis to Parker to the

1921

Camino switching station and to Hayfield. The third route is over Edison's own 220 kv lines from Hoover to the Chino substation and then eastward back to the Highgrove substation and to Colton. The staff's witness presented evidence applying to the period July 1, 1954 to November 30, 1958 to show that out-of-state energy from Hoover and Davis reached the City of Colton over the first and second routes.

Edison, delivers electric energy to Colton in the following manner. Energy on the 220 kv bus at its Highgrove substation is stepped down in voltage through two transformer banks and is delivered through two 66 kv circuits extending approximately 1.8 miles to Edison's Colton substation, located in Colton. From there through further transformers and related equipment the energy is delivered to two 11 kv circuits (called the Globe Mills and Derby circuits) extending about a mile to Edison's City of Colton substation where the voltage is reduced and delivery is made to Colton at 4 kv for resale to residential, commercial and other customers in and around Colton.[2] Energy is also delivered to Colton from the Colton substation on 11 kv circuits at four separate sites for well pumping. A fifth well pumping site is served by means of a 4 kv circuit extending from Edison's 33 kv San Bernardino substation located near San Bernardino, California.

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[2] Throughout this opinion and order the delivery of energy at the Colton City Substation will be called the resale delivery or the sale for resale although it actually includes some energy consumed directly by the City for street lighting and other purposes. No contention is made that enrgy so consumed be treated separately. The record shows that deliveries in the future will be made at 12kv from a new substation adjacent to the present one.

Edison's deliveries to Colton are made pursuant to a contract dated October 1, 1945, which replaced earlier contractual arrangements. Edison supplied energy to the City pursuant to this contract but the rates were raised on September 13, 1954, and November 9, 1957, purportedly pursuant to orders by the PUC. From October 1, 1945, until September 13, 1954, a single monthly bill was rendered by Edison to Colton for all delivery points, which are metered separately. Since the latter date Edison has rendered a separate bill for energy delivered at each delivery point and has applied separate rate schedules to the resale delivery at the City of Colton Substation on the one hand and the five well sites on the other, purportedly pursuant to the order of the PUC dated August 17, 1954.

Colton's total energy purchased from Edison for each of the calendar years 1954, 1955, 1956, 1957 and 1958 were 19,537,680 kwh; 21,013,800 kwh; 23,227,500 kwh; 24,741,560 kwh; and 25,696,910 kwh; respectively. Of those respective amounts Colton resold 15,759,243 kwh; 17,290,166 kwh; 19,045,006 kwh; 21,446,818 kwh and 21,777,472 kwh in each of those years; the difference in each case being the measure of Colton's own consumption and electric system losses. During the calendar years 1954 through 1958 Colton served, on an average basis, a minimum of 5,400 and a maximum of 6,025 resale customers.

In his discussion the examiner described Edison's system and the operation of the facilities, but he granted the motions to dismiss the proceedings made by Edison and PUC on the sole basis that under the provisions of the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act the sale of Hoover, Davis, and

Parker Dam energy to Colton for its own use or for resale comes under the jurisdiction of the Secretary of the Interior in the absence of regulation by the PUC. He did make findings as to whether out-of-state energy reached Colton.

The exceptions present the following issues: (1) Whether the Boulder Canyon Project Act vests jurisdiction over the resale of Hoover Dam energy in the Secretary of the Interior or the state Commission; (2) Whether PUC has properly taken jurisdiction of the sale to Colton in the light of the Federal Power Act; (3) Whether the electric energy delivered by Edison to Colton includes out-of-state energy; (4) Whether the sale by Edison to Colton is exempt from FPC jurisdiction as using facilities used in local distribution; (5) Whether the energy used by Colton for pumping purposes is separate from the resale energy and thus exempt from jurisdiction as a retail sale; (6) Whether Edison should be required to account for overcharges and make refund; and (7) Whether the interstate aspects of Edison's operations are so trivial that they should be ignored under the *de minimis* doctrine.

## THE BOULDER CANYON PROJECT ACT

In our opinion the Boulder Canyon Project Act, enacted in 1928,[3] does not prevent the application of the Federal Power Act, enacted in 1935,[4] to Edison's sale to Colton. The Boulder Canyon Project Act provided that the Secretary of the Interior was authorized to construct a dam on the Colorado River and to contract for the sale of electric energy. In Section 6 he was also given authority to lease units of the government-built plant with a right to generate electric energy, and the same section also provided that:

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[3] 45 Stat. 1056, 1061; 43 U.S.C. § 617e.

[4] 49 Stat. 838; 16 U.S.C. 791a-825r.

> "The Secretary of the Interior shall prescribe and enforce rules and regulations conforming with the requirements of the Federal Water Power Act, so far as applicable, respecting maintenance of works in condition of repair adequate for their efficient operation, maintenance of a system of accounting, control of rates and service in the absence of State regulation or interstate agreement, valuation for rate-making purposes . . . He shall also conform with other provisions of the Federal Water Power Act and of the rules and regulations of the Federal Power Commission, which have been devised or which may be hereafter devised, for the protection of the investor and consumer."

The language here in no way resembles Sections 205 and 206 of the Federal Power Act or Sections 4 and 5 of the Natural Gas Act, granting authority to regulate rates. It contains no standard for such regulation. At most it confers limited authority to protect consumers to the extent of any existing regulatory hiatus. What authority to regulate rates that is here granted to the Secretary of the Interior is authority that would be subject to the later enactment of the Federal Power Act in 1935 containing a comprehensive scheme for the regulation of sales at wholesale in interstate commerce (Section 201(b)). While Edison contends that the reference in the quotation above to provisions of the Federal Water Power Act "which may hereafter be devised" would apply to Part II of the Power Act, in our opinion the language refers to subsequent amendment within the regulatory scheme of the Water Power Act not to an entirely new system of regulation.

The Boulder Canyon Project Adjustment Act of 1940[5] reinforces our conclusion. With respect to rate regulation it provided:

> "That the Secretary of the Interior is hereby authorized and directed to, and he shall, promulgate charges, or the basis of computation thereof, for electrical energy generated at Boulder Dam during the period beginning June 1, 1937 and ending May 31, 1987, computed to be sufficient, together with other net revenues from the project, to accomplish [certain stated] purposes."

The purposes included meeting the cost of operation and maintenance and repaying the Treasury the advances to the Colorado River Dam Fund. There were no purposes to suggest regulation of the resale of energy generated at the project. The Adjustment Act also authorized the Secretary of the Interior to terminate the leases and to provide for the operation of the Project through agency contracts. The lessees were to become "agents of the United States" for the operation of the power plant.

The examiner refers to legislative history of the Boulder Canyon Project Act as showing that the Congress had granted regulatory power to the Secretary of the Interior over objections voiced by this Commission.[6] However, any conflict between the jurisdiction of the Secretary of the Interior and this Commission at the time of the enactment of the Boulder Canyon Project Act in 1928 would necessarily concern our powers under the Federal Water Power Act enacted in 1920,[7] and not our power under Part II of the Federal Power Act of 1935. The legislative history, in fact, indicates that the Boulder Canyon Act does not cover the resale of the energy.[8]

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[5] 54 Stat. 774; 43 U.S.C. § 618.

[6] See House Report No. 1657, 69th Congress, 2nd Session, pp. 17-18.

[7] 41 Stat. 1063; 16 U.S.C. § 791a, *et seq.*

1924

With respect to the energy generated at the Davis and Parker Dams, the examiner cites the Act of May 28, 1954, 68 Stat. 143, 43 U.S.C. preceeding § 617 providing:

> "For the purposes of effecting economies and increased efficiency in the . . . operation, and maintenance, thereof and of accounting for the return of reimbursable costs, the Secretary of the Interior is authorized and directed to consolidate and administer as a single project . . . the Parker Dam power project . . . and the Davis Dam project: Provided, that nothing in this Act shall be construed to alter or affect in any way the Boulder Canyon Project Act (45 Stat. 1057) . . . the Boulder Canyon Project Adjustment Act (54 Stat. 774) . . ."

Neither this act, nor the Reclamation Act of 1939, 53 Stat. 1187 providing for the Davis Dam, both of which expressly state that they do not amend the Boulder Canyon Project Act, in any way grant authority to the Secretary of the Interior to regulate rates for the resale of Edison's energy from the Colorado River Dams.

The examiner found that Edison as an agent of the United States under the Boulder Canyon Adjustment Act is exempt from the Federal Power Act under Section 201 (f). The latter provides that the Power Act shall not apply to "the United States, a state or any political subdivision of a state, or any agency, authority of any one or more of the foregoing . . ." Edison may be an agency of the United States for the operation of the power plant at Hoover Dam, but there is nothing to show that it is an agency of the United States for the resale of the energy.

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[8] 68 Cong. Rec. 4837; 69 Cong. Rec. 10274.

## STATE JURISDICTION

The examiner finds that the sales of electric energy to Colton for its own use or for resale have at all times been regulated by PUC and indicates that jurisdiction is properly in the PUC under the Boulder Canyon Project Act. The staff excepts saying that this ignores the *Attleboro* case[9] holding that a state may not constitutionally regulate a wholesale of electric energy in interstate commerce. Colton likewise argues that the states are powerless to act in this situation and nothing in the legislative history, to which we have already referred, shows that Congress intended to concede to the states an essentially national power.

In our opinion the sale by Edison of out-of-state energy to Colton, ~~as is shown to~~ be the case hereafter, is a sale at wholesale in interstate commerce and may not be regulated by the State of California as held by authorities too numerous to cite.[10] The sale, on the other hand, is subject to our jurisdiction under Section 201 of the Federal Power Act, which was enacted to close the "gap" in regulation created by the *Attleboro* case. There is a persuasive analogy here between Section 6 of the Boulder Canyon Project Act and Section 20 of the Federal Power Act, which appeared to give the states jurisdiction over the sale of power produced at a licensed project. Section 20 was held not to except licensed project power from the

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[9] *Pub. Util. Comm. v. Attleboro Co.,* 273 U.S. 83.

[10] See for example *Missouri v. Kansas Gas Co.,* 265 U.S. 298; *Pub. Util. Comm. v. Attleboro Co.,* 273 U.S. 83; *Panhandle Pipe Line Co. v. Comm'n* 332 U.S. 507, 514-515.

jurisdiction of this Commission over interstate sales at wholesale subject to Part II of the Power Act. *United States* v. *Public Utilities Comm'n.,* 345 U.S. 295, 303-304.

In their exceptions Edison and PUC argue that the examiner should have found that all of the facts and circumstances surrounding the sale here disclose that the transaction is a matter of local concern that does not involve the interests of the United States or of any state except California because the United States is the party selling the energy. Therefore, Edison argues, the *Attleboro* case does not apply; there is no *Attleboro* "gap" and the PUC takes jurisdiction because Section 201 (a) of the Power Act provides that Federal regulation is "to extend only to those matters which are not subject to regulation by the states."

In our opinion the field of wholesales of electric energy in interstate commerce has been held to be outside of the constitutional scope of state regulation. *United States* v. *Public Utilities Comm'n.,* 345 U.S. 295. The *Attleboro* case does not limit the rule to cases where it can be specifically shown that other states are affected. When the Federal Power Act was enacted, the Congress assumed that all such sales were exempt from state regulation. For instance, the Senate Committee report[11] on the Act stated:

> "The decision of the Supreme Court in *Public Utilities Commission* v. *Attleboro Steam & E. Co.* (273 U.S. 83) placed the interstate wholesale transactions of the electric utilities entirely beyond the reach of the states."

We thus must interpret the Power Act to occupy the entire field without the necessity of analyzing Federal and state relationships in each case. The fact that a sale of gas or electric energy is made by a company, all of whose facilities are located within the state of consumption does not give the state Commission jurisdiction.[12] Most electric companies operate within a single state whether their power supply comes from within or without the state, or both. In *F.P.C.* v. *Arizona Edison Co.,* 194 F. 2d (CA9) the Commission was affirmed in finding that transmission of Hoover Dam energy from out-of-state by a company all of whose facilities were located in Arizona made that company a "public utility".

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[11] Senate Report No. 621, 74th Cong. 1st Session, p. 17.

In any case, more than one state is affected by the interstate wholesale made by Edison. The Hoover and the Davis and Parker projects are interstate enterprises. Percentages of the Hoover Dam generated energy are assigned by the Secretary of the Interior to California, to Arizona and to Nevada.[13] Edison is designated an operating agent of the Hoover Plant for the purpose of serving itself and the United States, while the City of Los Angeles is operating agent for the purpose of serving itself and the states of Arizona and Nevada, but under certain conditions Arizona and Nevada may receive energy generated by the Edison portion of the plant.

The Hoover Dam and reservoir are to be operated, according to the statute, first for river regulation, improvement of navigation and flood control, second for irrigation and domestic uses and rights under the Colorado River Compact, and third for power. With respect to the latter, the operation of the Hoover Power Plant is integrated with the operation of other projects on the River and with the operations of the respective systems of the operating agents.

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[12] *Illinois Gas Co. v. Public Service Co.,* 314 U.S. 498; *Florida Public Utilities Co.,* 9 FPC 3, 12, 13. Subsequent to the *Illinois Gas* case, of course, gas companies whose facilities are located wholly within the state in which the gas is consumed have been exempted, and the power to regulate interstate wholesales has been specifically granted to the states involved. Natural Gas Act, Section 1(c), 68 Stat. 36, 15 U.S.C. § 717 (c).

[13] This and what follows is set forth in the contract for Operation of the Boulder Power Plant, dated May 29, 1941.

The way in which the operation of the Colorado River plants are integrated and the amount of energy taken by Edison or by the City of Los Angeles, or by any of the other allotees of energy at any one time is of interest to the other allotees, including the States of Nevada and Arizona. The energy sold to Colton is a part of this picture.

Thus, the wholesale, or bulk sale, of electric energy here, as in other cases, concerns more states than one and is subject to Federal regulation under the Federal Power Act and not to state regulation.

## OUT OF STATE ENERGY

There was considerable dispute at the hearing, in the briefs and in the exceptions, as to whether Edison actually sold energy generated outside of California to Colton, but the examiner made no finding on this matter. The staff submitted testimony and a field study in the form of an exhibit to show that out-of-state energy did, in fact, reach Colton. The evidence adduced by the staff relates to the period July 1, 1954 to November 30, 1958. Edison admits that Hoover energy is received into its system at Hayfield, but denies that the record demonstrates that it is transmitted to Colton. It says, relying on the testimony of its

1927

expert witnesses, that in an inter-connected electric system with several generating resources, and numerous loads, it is impossible to identify the electric energy delivered to a particular load. PUC also contends the evidence is defective and does not show that out-of-state energy reaches Colton.

The record does not trace Hoover Dam energy over Edison's own lines to its Chino substation and thence to Colton, but does show that during substantial periods of time, at least after July 1, 1954, Hoover Dam energy and, at times, Davis energy is transmitted over MWD's lines via its Camino switching station and is delivered to Edison's system at Hayfield. From this point such energy is transmitted over Edison's 220 kv lines and reaches Edison's Highgrove substation. The record shows that it is transmitted from this point through the step-down transformers mentioned above and is delivered to Colton for resale and for use by the city for pumping. Edison's admission that Hoover Dam energy reaches Highgrove is supported by the record. The staff study shows that Davis energy also reaches Highgrove, at least at times. The problem with respect to Davis energy was that the Parker Dam plant is interconnected with Davis, and Parker energy is generated in California. It is reasonable to conclude from meter readings of the flow of energy from Davis to Parker and from Parker to MWD that when the flow from Davis to Parker was greater than the delivery from Parker to MWD, all of the energy received by MWD was Davis energy. To determine the amount of Davis and Parker energy reaching MWD's Camino switching station it is necessary, in the absence of direct meter readings, to subtract the maximum requirements of MWD's water pumps from the Parker to MWD flow. This actually results in an underestimate of the energy flowing to Camino, and thence to Highgrove, for the pumps were not operating at all times at full capacity.

Edison's Highgrove substation is located not far from Colton. The 220 kv bus in that substation is connected to

Hayfield, to Edison's Etiwanda steam plant, to Edison's Chino substation and to two transformer banks which connect with the Highgrove 66 kv bus. Energy reaches Colton from the 66 kv bus after reduction in voltage at the Colton substation and the Colton City Substation. It appears that under ordinary conditions all of Colton's supply of power is delivered by Edison via its Highgrove substation.

Meter readings in the record show flows of energy, hour by hour, from Hayfield to the 220 kv Highgrove bus and the deliveries to the two transformer banks stepping down the energy to 66 kv. Edison points out that there were no meters available to measure the flow of energy to or from the Chino substation or from the Etiwanda power plant. However, the connection with Hayfield is located on the 220 kv bus between and adjacent to the connections of the step-down transformer banks. Thus when any energy from Hayfield was being delivered to the 220 kv bus, it was necessarily supplying the requirements of the transformer banks and only excess energy from Hayfield would contribute to the power supply for other loads on the bus.

If the energy from Hayfield were less than the requirements of the transformer banks, energy from other sources would be mixed with it, and it is reasonable to conclude that the same proportions would obtain all the way to Colton. When the energy from Hayfield was greater than the requirements of the transformer banks, it would follow that their requirements would be entirely supplied from Hayfield. On many such occasions the energy from Hayfield included only Hoover and Davis energy, and no Parker energy, so that 100 percent of the energy delivered to the City of Colton came from out-of-state.

Although Edison's witnesses drew different ultimate conclusions as to the receipt of out-of-state energy by Colton than did our staff, we think it is significant that Edison's witnesses treated a bus as a common point. So treated, it would follow that the energy would be mixed and that the introduction of any out-of-state energy on to the bus would mean that out-of-state energy would be included in any deliveries from the bus. This treatment with respect to mixing of energy was generally employed as a basis for our finding of jurisdiction under Section 201 of the Power Act in our *Penn Water* case.[14]

On the basis of the record, electric energy generated at Hoover was sold to Colton during 596 hours out of 598 hours in the last six months of 1954, 1,338 hours out of 2,065 in 1955, 270 hours out of 1,954 in 1956, 199 hours out of 1,388 in 1957, and 1,115 hours out of 1,479 in 1958; and these deliveries included Davis energy during 341 hours in 1954, 746 hours in 1955 and 31 hours in 1956.

Since Edison has been found to deliver electric energy to Colton for resale that has been generated outside of California, its sale to Colton is a sale of electric energy at wholesale in interstate commerce subject to Sections 201, 205 and 206 of the Federal Power Act.

## FACILITIES SERVING COLTON

Edison contends that the facilities used to serve Colton are local distribution facilities and that the sales of electric energy to Colton are therefore exempt from our jurisdiction even if it be assumed that interstate energy is received by Colton and that the Boulder Canyon Project Act does not preclude jurisdiction. In our opinion even if

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[14] *Pennsylvania Water & Power Co.*, 8 FPC 1, affirmed as *Pennsylvania Water & Power Co. v. F.P.C.*, 193 F. 2d 230 (CADC) affirmed 343 U.S. 414.

Edison is factually correct about the nature of the facilities, its point is not relevant under the Federal Power Act. Since the sale to Colton includes Hoover energy, it is a sale at wholesale in interstate commerce subject to our jurisdiction regardless of the nature of the facilities used to make the sale. Section 201 (b) excludes from our jurisdiction facilities used in local distribution, but that is not the question here. The *Connecticut Light and Power* case,[15] cited by Edison involved the question whether the company was a "public utility." The court held it was necessary to find that certain facilities used to serve Bristol, Connecticut with out-of-state energy transmitted by another company were not used in local distribution before it could be determined that the company was a "public utility" owning facilities subject to our jurisdiction. Here, of course, there is no question of Edison's status. It transmits Hoover Dam energy that it receives at Hayfield and is thus a "public utility" subject to our jurisdiction.

In any case, there are facilities owned by Edison which it uses exclusively to effect the wholesale to Colton and not for local distribution. These include the City of Colton substation and portions of the 12 kv Globe mills and Derby lines after service to the last customer at retail. These facilities themselves would make Edison subject to the Power Act since they are facilities for the sale of electric energy in interstate commerce that are not used in local distribution.[16]

Apart from this, there is nothing in the record to show that Edison's facilities transmitting energy to the point of the wholesale, which is made on the low voltage (4 kv) side of the Colton City Substation, are local distributio facilities. The fact that the 12 kv lines extending from th Colton substation serve an industrial customer, severa lighted highway signs, a residence and a railroad sectio house before they reach the transformers in the Colto City Substation does not transform them into local distribution lines even if this were relevant.[17]

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[15] *Connecticut Light & Power Company v. F.P.C.*, 324 U.S. 515.

[16] See *Florida Public Utilities Co.*, 9 FPC 3.

## THE EFFECTIVE RATE SCHEDULE

Edison has never filed a rate for service to Colton eve though in our opinion it was required to do so by th Federal Power Act. It is necessary that we find the rat we should recognize as its effective rate in order to determine what rate schedule it should file and to determin whether Edison has overcharged Colton since July 1, 1954 which is as far back as the record shows we had jurisdiction.

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The Power Act provides in Section 205 that under suc rules and regulations as we may prescribe every publi utility shall file its rates and charges with this Commission for any sale subject to our jurisdiction, and that n change shall be made in any rate except by filing ne schedules. The problem arises where the company has no conformed to these requirements. In the case of th independent producers of gas it has been held that th contract rate as of June 7, 1954, when the Supreme Cour held the producers subject to our jurisdiction,[18] was th effective rate as of that date. *Cities Service Gas Co.* v *F.P.C.*, 255 F. 2d 860 (CA10) *certiorari* denied 358 U.S

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[17] *Wisconsin Michigan Power Co.*, 10 FPC 170, 176-177, affirme as *Wisconsin Michigan Power Co. v. F.P.C.*, 197 F. 2d 472, 477 *certiorari* denied 345 U.S. 934.

[18] *Phillips Petroleum Co. v. Wisconsin, et al.*, 347 U.S. 672.

837; *Natural Gas Pipeline Co.* v. *F.P.C. (Dorchester intervener)*, 253 F. 2d 3 (CA3), *certiorari* denied 357 U.S. 927. The fact that the contract rate was not filed does not prevent our jurisdiction from attaching. In *Natural Gas Pipeline Co.* v. *Harrington*, 246 F. 2d 915, 253 F. 2d 231 (CA5), *certiorari* denied 356 U.S. 957, it was said:

> ". . . the contract rate, even though unfiled became and remained the only lawful rate until changed by order of the Federal Power Commission."

Turning to the facts with respect to Colton's rates, we note that contract of October 1, 1945, between Colton and Edison provided for the sale by Edison of all of Colton's electrical requirements for a period of ten years and for the period thereafter on a month-to-month basis subject to being terminated upon written notice by either party. This contract remained in effect until by Decision No. 50449, dated August 17, 1954, the PUC purportedly determined new higher rates for Edison including those applicable to the City of Colton. When the ten-year term of the 1945 contract expired in 1955, neither party notified the other of an intention to terminate and the contract has been continued since that time on the month-to-month basis. On October 15, 1957, in Decision No. 55703, after application by Edison, PUC raised the rates again, including those applicable to Colton.

As set forth above, the record in this proceeding shows that, at least by July 1, 1954, interstate energy was being delivered to Colton so that the sale was subject to our jurisdiction. On that date the 1945 contract was in effect and embodied the agreement between the parties as to the rates. We shall therefore, consider the 1945 contract as embodying Edison's rate that should be filed in compliance with the Act. Any change made after that date was required by Section 205 (d) of the Power Act and our Regulations to be filed with us, and in the absence of a filing such change was ineffective.

1931

*Cities Service Gas Producing Co.* v. *F.P.C.*, 233 F. 2d 726 (CA10), *certiorari* denied 352 U.S. 911.[10] It follows that the proposed changes in Edison's rate made by the PUC without authority were in effective as rate changes because they were not filed with us. This is an appropriate result because the proposed changes made in 1954 and 1957 were increases whose reasonableness we did not have opportunity to test by hearing and suspension proceedings under Section 205 (e) of the Act.

Apart from failure to file their proposed rate changes, in our opinion no change was made in the contract although Edison argues that the parties agreed to be bound by the changes made by the California Commission. The contract provides:

> "This contract shall at all times be subject to such changes or modifications by the Railroad Commission of the State of California as said Railroad Commission may from time to time direct in the exercise of its jurisdiction."

Edison contends that by this language the parties intended that the contract be subject to change by the PUC whether authorized or not. It said that if the parties had intended otherwise they would have used an expression such as "lawful jurisdiction." However, the words "its jurisdiction" means "lawful jurisdiction." Jurisdiction must be lawful to be jurisdiction.

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[10] In *United Gas Co.* v. *Mobile Gas Corp.*, 350 U.S. 332, it was said with respect to the Natural Gas Act that "§ 4 (d) means simply that no changes neither a unilateral change to an *ex parte* rate nor an agreed upon change to a contract can be made by a natural-gas company without the proper notice to the Commission." This reasoning was held applicable to the Power Act in *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348.

Edison argues further that Colton by its course of action intended to be contractually bound by the rate modifications prescribed by PUC. Edison points out that Colton did not contest the PUC's jurisdiction before it accepted the 1954 rate increase without protest, although protesting the 1957 increase, and did not attempt to terminate the ten year 1945 contract in 1955 as it was privileged to do according to its provisions. In our opinion conformity without protest to the asserted authority of the rate regulating body of the state does not result in a contractual adoption of its unauthorized orders. This is very different from free bargaining between two contracting parties. Colton's failure to terminate the contract likewise appears to be without significance because its only source of power is Edison, and the rates were regulated by PUC. Edison's legal rate, although unfiled, was its 1945 contract rate. As said in the *Harrington* case, 246 F. 2d at p. 919, "Any price in excess of the contract rate was thus contrary to the spirit, if not the letter of the Natural Gas Act." But whatever the contractual effect of Colton's actions the proposed changes made in 1954 and 1957 were not filed with us and were thus ineffective under the Power Act.

Edison argues that we should reopen the record to hear evidence on the interpretation of the contract. However, we note that the effect of the contract was an issue in this proceeding raised by Colton in its original petition filed May 9, 1958, and indicated by our order of August 28, 1959, fixing hearing, so that Edison had full opportunity to present evidence on the interpretation of the contract. In any case the contract and surrounding circumstances are a matter of record and have enabled us to come to the conclusion expressed above.

Edison contends further that a determination of jurisdiction would allow it to rescind the contract for a material mistake of fact and law. It has not shown grounds for such rescission here, as it might be expected to do, but in any case the contract of 1945 contains its legal rate as though filed, for it should not be permitted to take advantage of its failure to file. Treated as filed the rate would not be rescindable, for Edison "can claim no rate as legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251.

Edison apparently attempts to relieve itself of responsibility by pointing out that our Secretary had engaged in correspondence with it in 1953 and 1954 and that the Commission had failed to take action or to require it to file rates. Of course, our not completing an investigation or taking action does not relieve Edison of the requirements of the Power Act. In fact, the correspondence was warning to it that the sale to Colton might be subject to our jurisdiction and that its rates and changes in them should be filed.

## DELIVERIES TO COLTON FOR PUMPING

Edison contends that we do not have jurisdiction over its deliveries to Colton for pumping purposes at the several sites both within and without the city. The staff treats all of Edison's deliveries under the 1945 contract as jurisdictional, and Colton takes the position that we have jurisdiction over all of the energy sold to Colton since no separation is made in the 1945 contract and amendments purported to be made by the PUC are without effect.

Our jurisdiction is defined in Section 201 of the Federal Power Act where it is provided that the Act shall apply "to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy." However, where a sale includes mixed energy, that is both interstate and intrastate energy, or resale and direct sale energy, and both types are indistinguishable, it is held that we have jurisdiction over the entire sale. *Pennsylvania Water & Power Co.* v. *F.P.C.,* 343 U.S. 414; *United States* v. *Public Utilities Commission,* 345 U.S. 295; *California Electric Power Co.* v. *F.P.C.,* 199 F. 2d. 206 (CA9) *certiorari* denied 345 U.S. 934; Compare *City of Hastings, Nebraska* v. *F.P.C.,* 221 F. 2d 31 (CADC) *certiorari* denied 349 U.S. 920, and *Colorado Interstate Gas Co.,* 19 FPC 1012, 1022-1023.

In the *California Electric Company* case where there was a sale to a Naval installation which included energy resold by the Navy to a housing development, it was said that "the only mode of segregation would be by separating the two loads and supplying each by an independent transmission line." In *United States* v. *P.U.C.,* it was suggested in connection with the same sale that the question whether the Commission's jurisdiction was limited to the resale energy would turn on "whether an essentially separate transaction covering the power directly consumed by the purchaser is identifiable." The Court found no evidence of "separate rates, separate negotiations, separate contracts, or separate rate regulation by official bodies." In each case it was held that separation had not been effected.

In the p[illegible]nt case we have concluded that Edison's presently effective rate is embodied in its 1945 contract. The rate set forth in the contract is composed of a demand charge and an energy charge applicable both to the delivery for resale and the deliveries for pumping purposes, but these deliveries were metered separately. In its order of August 17, 1954, the PUC, in addition to prescribing separate rate schedules for the deliveries for resale at the City of Colton Substation on the one hand, and the deliveries for pumping purposes on the other, permitted separate metering and billing for the pumping sales, and this separate metering and billing commenced September 13, 1954 and has continued since that time.

Thus a separation of the pumping deliveries from the deliveries for resale has plainly been achieved. Irrespective of the invalidity of the PUC's orders, a separation in fact is not only feasible but has been accomplished. Under *United States* v. *Public Utility Comm'n., California Electric Power Co.* v. *F.P.C.* and *City of Hastings* v. *F.P.C., supra,* there is no justification for our asserting jurisdiction in such a case over the separated non-jurisdictional transaction. We further find that if the question of separation had been properly presented by appropriate filings in 1954, the same conclusion should have been reached. We conclude that the public interest will be served by treating the deliveries for pumping purposes alone as having been separate sales since September 13, 1954, and by treating only the sale for resale as subject to our jurisdiction since then.

## ACCOUNTING, RATES AND REFUNDS

The staff and Colton contend that Edison should have filed rates for its services to Colton and should now file the rates that were actually charged in 1954, namely those in the 1945 contract and should account for the difference between the 1945 contract rates and those actually charged. Edison contends that there is no overcharge since its charges have been in accordance with the contract as modified by the 1954 and 1957 orders of the PUC.

We have determined that Edison's effective rate schedule since July 1, 1954, is represented by the 1945 contract and that modifications purported to be made by the PUC in 1954 and 1957 were ineffective to change the arrangement as a contract or as a rate schedule. Therefore, we shall require that the 1945 contract be filed as Edison's effective rate schedule but shall be applicable only to the deliveries at the Colton City Substation, not to the pumping deliveries. Further changes, of course, can be made in accordance with the Federal Power Act and our Regulations.

The record shows that from 1954, when the first PUC order purported to become effective, Edison has been charging rates that are higher than those specified in the 1945 contract. In these circumstances, it is appropriate to require that Edison establish in its books a special reserve account for the amounts collected in excess of the 1945 contract rate for the electric energy sold to Colton for resale, together with interest on such excess amounts, and require that Edison submit a proposed plan for the disposition of such special reserve. *Wisconsin-Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472, certiorari denied 345 U.S. 934.

## DISCRETION AS TO JURISDICTION

Edison and PUC contend that in the exercise of our administrative discretion we should not take jurisdiction over Edison's sale to Colton pointing out that the proportion of Hoover energy received via Hayfield was very small compared with the total energy available in Edison's system. While the record supports this statement, the question of the amount of interstate energy available in the Edison system is not an issue here. This proceeding is not concerned with Edison's status as a public utility as the Supreme Court was concerned with Connecticut Light & Power Company's status[20] when it indicated that the flow of energy transmitted out of the state was trivial.

In the present proceeding we have found that out-of-state energy from the Colorado River dams reaches Colton during significant periods of time and that on many occasions the energy reaching Colton is composed entirely of out-of-state energy. In addition we should note that Colton is a community of some size consuming substantial quantities of electric energy and is entirely dependent on Edison for its energy supplies. On the basis of the discussion above, we are of the opinion that we have been given jurisdiction over Edison's rates to Colton, and have no discretion to reject that jurisdiction. Because the State of California has been assuming jurisdiction over the sale to Colton, we are reluctant to change that relationship, but this is not a case where we can abandon jurisdiction.

## MOTIONS TO DISMISS

The motions to dismiss filed by Edison and PUC relied on substantive questions already discussed. Apart from these, Edison argued that the decisions of the PUC irrespective of their validity, were *res judicata* with respect to the question of jurisdiction. However, the exercise by a state of jurisdiction over an interstate sale does not prevent the attachment of the jurisdiction of this Commission. *Wisconsin-Michigan Power Co.* v. *F.P.C.*, 197 F. 2d

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[20] *Connecticut Light & Power Company v. F.P.C.*, 324 U.S. 515.

472, 479-480 (CA7), *certiorari* denied 345 U.S. 934; *Wisconsin* v. *F.P.C.*, 201 F. 2d 183, 185 (CADC) *certiorari* denied, 345 U.S. 934.

Edison also argues that Colton acceded to the jurisdiction of PUC and by the principles of equitable estoppel is barred from contesting it. We have found that Colton did not accede to the PUC's jurisdiction and that beginning in November of 1957 Colton paid its bills under protest so that it does not appear that estoppel would apply. In any case, this Commission is not estopped to assert the jurisdiction conferred on it by the Federal Power Act.

In view of the full record and the result reached herein, we do not believe it necessary to have oral argument as requested by the staff.

*The Commission further finds:*

(1) Edison, a California Corporation, owns and operates facilities, among others, for the transmission and sale at wholesale for resale of electric energy which is transmitted from the states of Arizona and Nevada and consumed in California, all of which facilities are in addition to and do not include facilities used for the generation of electric energy, facilities used in local distribution, or only for the transmission of electric energy in intrastate commerce or facilities for the transmission of electric energy consumed wholly by the transmitter. Edison is therefore a "public utility" within the meaning of Sections 201, 205 and 206 of the Federal Power Act.

(2) Edison's sale of electric energy to Colton at the Colton City substation for resale, as referred to above, is a sale of electric energy at wholesale in interstate commerce and has been such at least since July 1, 1954. It is subject to the provisions *inter alia* of Sections 201, 205 and 206 of the Act, and each rate or charge made, de-

manded or received by Edison from Colton, for or in connection with such sale, is so subject to this Commission's jurisdiction.

(3) Edison's sales of electric energy to Colton for well pumping alone at the five sites referred to above are transactions separate from the sale to Colton for resale referred to in paragraph (2) and are not subject to this Commission's jurisdiction.

(4) The facilities used to make the sale to Colton referred to in (2) above, are not used in local distribution within the meaning of Section 201(b) of the Act.

(5) It is necessary and appropriate for the purposes of the Act that Edison be required to file (in the form prescribed in Part 35 of the Commission's Regulations under the Act), its 1945 contract with Colton as its rate schedule for its sale at wholesale of electric energy to Colton embodying those rates and charges of Edison for such service to Colton as were actually being charged by Edison to Colton as of July 1, 1954; such rate schedule to be effective until and unless superseded by a change in rate schedule pursuant to Section 205(d) of the Act and Section 35.3(c) of the Regulations thereunder, or changed pursuant to order of this commission.

(6) It is necessary and appropriate for the purposes of the Act that Edison be ordered to cease and desist from charging, demanding or receiving from Colton any rates and charges other than those duly filed pursuant to Section 205 of the Act and Part 35 of the Commission's Regulations.

(7) It is reasonable and appropriate for the purpose of the Act that Edison be ordered to account for monies

collected by Edison from Colton in excess of its lawful rate as specified below.

(8) It is appropriate that the motions to dismiss filed by Edison and the PUC be denied.

*The Commission orders:*

(A) Within 45 days of the issuance of this opinion and order Edison shall file in accordance with our Regulations and Section 205 of the Federal Power Act its 1945 contract with Colton as its rate schedule for its sale at wholesale of electric energy to Colton at the Colton City Substation for resale. Such rate schedule shall be effective July 1, 1954 and shall remain effective until and unless superseded by a change filed pursuant to Section 205(d) of the Act and Section 35.3(c) of the Regulations thereunder, or changed pursuant to order of this Commission.

(B) From and after 45 days from the issuance of this opinion and order Edison shall cease and desist from charging, demanding or receiving from Colton for the sale of electric energy for resale at the Colton City Substation any rates and charges other than those duly filed pursuant to Section 205 of the Act and Part 35 of the Commission's Regulations.

(C) Edison shall: (1) account for the monies collected by it from Colton on and after July 1, 1954 for all energy delivered at the Colton City Substation and continuing to the date of its compliance with the Commission's requirements as ordered herein (including the filing of the schedule of rates and charges for, and billings to Colton in accordance therewith) which are in excess of the monies which would have been collected by Edison under the rates and charges actually being charged to Colton for such energy as of July 1, 1954; (2) establish a special reserve under Account 265, Miscellaneous Operating Reserves, by charges to Account 216, Unappropriated Earned Surplus, for the amounts of that excess, together with interest thereon at the rate of 6 percent per annum from the respective dates on which the excess amounts were collected until the date of compliance with paragraphs (A) and (B); and (3) within 60 days from the issuance of this opinion and order, file with this Commission the computation of the special reserve amounts and appropriate accounting entries establishing such special reserve, together with a proposed plan for the disposition of such special reserve; and serve such filing on all parties to this proceeding.

(D). Within 15 days of the filing referred to in (C) above, parties to this proceeding shall file their objections, if any, with the Commission.

(E) The motions to dismiss filed by Edison and PUC are hereby denied.

(F) Exceptions to the presiding examiner's decision not granted in effect by this opinion and order are hereby denied.

(G) The staff's motion for oral argument is hereby denied.

By the Commission.

(Federal Power Commission's Seal.)

/s/ J. H. Gutride,
Joseph H. Gutride,
Secretary.

# UNITED STATES OF AMERICA
# FEDERAL POWER COMMISSION

## OPINION NO. 346

City of Colton, California
vs.
Southern California Edison Company,

Docket
No. E-6821

## ERRATA NOTICE

(August 16, 1961)

## OPINION AND ORDER DETERMINING JURISDICTION

(Issued July 31, 1961)

| | |
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| Cover and Title Page: | Strike "Operator" after "Southern California Edison Company". |
| Page 2, line 10: | After "of" insert "Southern" |
| Page 4, line 7: | After "did" insert "not" |
| Page 8, line 2: | Change "194 F. 2d (CA9)" to read "194 F. 2d 679 (CA9)" |

/s/ J. H. Gutride,
Joseph H. Gutride
Secretary

(1945)

**Petition of Southern California Edison Co. for Rehearing, E-6821.**

1945

## BEFORE THE FEDERAL POWER COMMISSION

| | |
|---|---|
| City of Colton, California<br>vs.<br>Southern California Edison Company | Docket No. E-6821 |

## PETITION OF SOUTHERN CALIFORNIA EDISON COMPANY FOR REHEARING

Southern California Edison Company (Edison), being aggrieved by the Commission's Order Determining Jurisdiction, issued July 31, 1961, files this Petition for Rehearing pursuant to Section 313(a) of the Federal Power Act, as amended, and paragraph 1.34 of the Commission's Rules of Practice and Procedure, and respectfully requests that the Commission grant a rehearing and vacate and reverse its said Order of July 31, 1961, and issue in lieu thereof an order determining that the sales of electric energy by Edison to the City of Colton, California (Colton), are not sales of electric energy at wholesale in interstate commerce subject to the jurisdiction of this Commission and that the Petition of the City of Colton be dismissed for lack of jurisdiction of the Federal Power Commission to act thereon.

1946

### Concise Statement of Errors

Edison respectfully requests that the Commission vacate and reverse its Order for the following reasons:

1. Edison's sales of electric energy to Colton for resale are not in interstate commerce. There is substantial evidence that on the basis of scientific principles,

experimental engineering techniques and sound operating procedures, a determination that out-of-state energy reaches Colton cannot be made. There is no substantial evidence upon which to base a finding that electric energy generated outside of the State of California has ever been delivered to Colton.

By reason of matters which have arisen since the hearing, out-of-state energy is not delivered to Colton and the issue of jurisdiction is moot.

2. The Boulder Canyon Project Act precludes jurisdiction of the Federal Power Commission over Edison's sales to Colton because such jurisdiction is vested in the Secretary of the Interior in the absence of regulation by the California Public Utilities Commission.

3. Edison's sales to Colton for resale are a matter of local concern that does not involve the interests of any State except California and therefore there is no constitutional inhibition against the exercise of such jurisdiction over such sales by the State of California through its Public Utilities Commission. There is no "Attleboro" gap.

4. The facilities used by Edison in making its sales of electric energy to Colton for resale are "used in local distribution" within the meaning of Section 201(b) of the Federal Power Act and are not subject to the jurisdiction of this Commission. There is no substantial evidence upon which to base a finding that the facilities used by Edison in making its sales of electric energy for resale to Colton are not used in local distribution.

5. The flow of out-of-state power into Edison's system has been trivial and its availability has continued to decrease, and the Commission should have declined to assert jurisdiction regardless of other considerations.

6. As a matter of contract law, the rates presently charged to Colton are applicable to service under the 1945 Contract and Edison has not collected from Colton any rates or charges in excess of those which it has been lawfully entitled to collect.

7. Edison is entitled to introduce evidence establishing the proper interpretation of said Contract and the course of Colton's conduct in respect thereto. Evidence pertinent to these issues was offered but erroneously rejected in the course of these proceedings.

8. Colton is estopped upon equitable principles to deny the propriety of the rates presently charged, and the decisions of the Public Utilities Commission of the State of California were *res judicata* with respect to the question of the propriety of the rates collected.

9. If rate jurisdiction exists in this Commission, a material mistake of fact and law respecting the 1945 Contract exists justifying rescission of the Contract by Edison and requiring the amounts reasonably chargeable for past service to Colton be then fixed.

10. This Commission is without authority to order Edison to account for or refund any portion of the charges collected by Edison from Colton and any such order is erroneous for the reasons, among others, that there has been no evidence and no claim whatsoever that the rates charged by Edison to Colton are unjust, unreasonable, discriminatory or preferential; the rates collected by Edison for service to Colton have been just and reasonable and any refund would therefore be a complete windfall to Colton and would constitute the imposition of inequitable and unjustified punitive damages on Edison; the net effect of any refund would be to make retroactive a rate

for service to Colton which would be discriminatory and constitute an undue preference to Colton; and an order for refunds would be confiscatory for the reason that Colton would, in effect, have received electric service at rates which Edison can show would not produce revenue equal to the cost of service.

11. It is error to require that the Colton Contract be filed as a rate schedule to be effective retroactively to July 1, 1954, or to any date prior to the date of filing.

1949

12. The sales of electric energy by Edison to Colton are not sales of electric energy at wholesale in interstate commerce subject to the jurisdiction of this Commission. The Petition of the City of Colton should be dismissed for lack of jurisdiction of the Federal Power Commission to act thereon.

The Commission's Order Determining Jurisdiction issued July 31, 1961, contains findings of fact which are not supported by substantial evidence and contains conclusions of law which are not supported by the record. Furthermore, the issue of jurisdiction is now moot because of matters which have arisen since the hearing. Said Order is erroneous, in violation of the Federal Power Act, the Administrative Procedure Act and in violation of Edison's rights, privileges and immunities under the Constitution of the United States.

1950

## Argument in Support of Specifications of Error

ERROR NO. 1. No electric energy generated outside of the State of California has been delivered to Colton. A summary of the evidence and the reasons for this conclusion are fully set forth in Edison's Opening Brief, pages

(1950)

15 through 26, its Reply Brief, pages 1 through 7, and its Exceptions, page 10, and are incorporated herein by reference.

The Commission's conclusion that Colton received out-of-state energy ignores the competent evidence of one of America's leading scientists in the field of electric phenomena, the experimental engineering evidence obtained from the most modern electronic analog computer, the sound judgment of Edison's most highly qualified operating executive, and was based solely upon "regulatory rationale" which is unwarranted in fact and in law. The Commission notes (Mimeo., p. 9) that:

> ". . . the connection with Hayfield is located on the 220 kv bus between and adjacent to the connections of the step-down transformer banks."

From these facts the Commission goes on to assert the following conclusion:

> "Thus when any energy from Hayfield was being delivered to the 220 kv bus, it was necessarily supplying the requirements of the transformer banks and only excess energy from Hayfield would contribute to the power supply for other loads on the bus."

This conclusion does not follow from the facts

1951

stated. The Commission assumed that energy from Hayfield had some magic affinity which compelled it to flow toward one connection on the bus in preference to other connections. The evidence shows that such an assumption is unwarranted and its validity cannot be proved. While Edison's witnesses treated a bus as a common point, this does not support any inference that energy "mixes", but instead proves that the directions of flow on the bus cannot be determined. It was shown that one cannot conclude that any one particular source supplies a load unless all other sources are insufficient to do so. This method of analysis is based upon Kirchhoff's law which has been demonstrated by experiment to be true. As other sources have always been sufficient, the staff's method of analysis, apparently adopted by the Commission, was based entirely upon an assumption not susceptible of proof by experiment or otherwise.

In any event, Edison does not receive Hoover energy via Hayfield by reason of matters which have arisen since the hearing. Because of these recent developments, as hereinafter set forth, the issue of jurisdiction is now moot.

ERROR NO. 2. The Boulder Canyon Project Act precludes jurisdiction of the Federal Power Commission over Edison's sales to Colton. A summary of the evidence and the reasons for this conclusion are fully set forth in Edison's Opening Brief, pages 27 through 29, its Reply Brief, pages 8 through 10, its Exceptions, pages 2 and 3, as well as in the Presiding Examiner's Decision, and are incorporated herein by reference.

Because of the references in the Commission's decision to energy generated at Davis Power Plant in connection with the Boulder Canyon legislation (Mimeo., p. 6), it is necessary to point out that the Secretary of the Interior has not only been given the authority to regulate the rates charged upon resale by Hoover allottees, but also has the authority to integrate the operations of Hoover, Davis and Parker Power Plants. It follows that this regulatory authority extends to energy from Davis or Parker furnished by the United States to Hoover allottees pursuant

(1952)

to these integration rights. Therefore, should energy from Davis have been supplied by the United States in lieu of an allottee's entitlement to Hoover energy, such replacement in no way modifies the authority of the Secretary of the Interior under the Boulder Canyon Project Act to regulate the resale of such energy.

ERROR NO. 3. Edison's sales to Colton for resale are a matter of local concern to be regulated by the State of California. A summary of the evidence and the reasons for this conclusion are fully set forth in Edison's Opening Brief, pages 5 through 7, its Reply Brief, pages 18 and 19, and its Exceptions, pages 2 through 9, and are incorporated herein by reference.

1953

The Commission describes the operation of Hoover Power Plant in a manner that implies that Edison's operations affect the interests of the States of Nevada and Arizona (Mimeo., p. 8). These other states cannot be affected by Edison's operations for the reason that the portions of Hoover Power Plant assigned for the use of the States of Nevada and Arizona are separated, both physically and electrically, from those operated by Edison. The record clearly shows that Hoover Power Plant is operated as several separate generating plants.

The operations of the Colorado River Plants are under the sole control of the United States. Edison's operations at Hoover are performed solely as an agent of the United States and cannot be used to determine that Edison is a "public utility" or subject it to the jurisdiction of the Federal Power Commission, because such jurisdiction is precluded by Section 201(f) of the Federal Power Act.

It is only after the United States delivers energy to Edison, that Edison acts in its own behalf. The price paid by Edison to the United States for such energy and the rates at which such energy is resold, is of concern only to Edison's customers, all of whom are in California. No state other than California is concerned and there is no "Attleboro" gap.

ERROR NO. 4. The facilities serving Colton are used in local distribution and the Commission's contrary

finding is not supported by substantial evidence. A summary of the evidence and the reasons for this conclusion are fully set forth in Edison's Opening Brief, pages 29 through 37, its Reply Brief, pages 13 through 16, and its Exceptions, pages 11 through 13, and are incorporated herein by reference.

In discussing the nature of facilities serving Colton, the Commission (Mimeo., p. 11) states:

> "In any case, there are facilities owned by Edison which it uses exclusively to effect the wholesale to Colton and not for local distribution. These include the City of Colton substation and portions of the 12 kv Globe mills and Derby lines after service to the last customer at retail."

To reach this conclusion the Commission necessarily reasoned that the nature of the facilities is determined by what the customer does with the energy after it is received. In other words, if the customer consumes the energy, the facilities are used in local distribution, but if the customer resells the energy, the nature of the facilities serving that customer is somehow different. Whether or not facilities are used in local distribution depends upon the functions they perform and their physical characteristics, not upon the customer's activities after delivery. The evidence clearly shows that the classification of

(1954)

utility facilities as being used either for transmission in bulk or for local distribution depends upon their capacity, voltage and the distance the energy is transported and whether or not the energy is being divided for delivery to several customers. The use to which the energy is put after delivery

1955

has no relevance whatsoever to this classification.

It should also be noted that the Commission's statement that a part of the Globe mills and Derby lines are used to serve Colton "after" service to the "last" customer at retail is patently incorrect. These two lines constitute one loop ciricuit and each and every part thereof serves every customer. The Commission further states that the use of these facilities to serve other customers before they reach Colton does not transform them into local distribution lines. If these facilities, which form the feeder network traversing the streets and alleys and property lines serving the customers' premises with energy, are not "facilities used in local distribution", then it would seem there can be no facilities whatsoever in any utility system which are so used. The Commission has construed the Federal Power Act in a manner which fails to give meaning to one of its significant parts.

ERROR NO. 5. Regardless of other considerations, the Commission should not have asserted authority to regulate the sales by Edison to Colton because the flow of out-of-state power into Edison's system has been trivial. A summary of the evidence and the reasons for this conclusion are fully set forth in Edison's Opening Brief, pages 37 through 39, its Reply Brief, pages 17 and 18, and its Exceptions, pages 18 and 19, and are incorporated herein by reference.

While the Commission concedes that the proportion of Hoover energy received via Hayfield was very small compared with the total energy available in Edison's system (Mimeo., p. 16), they conclude that this fact is not relevant to the issue of rate jurisdiction. The Commission admits, however, that *de minimis* considerations are relevant in determining status as a public utility. If the trivial amount of energy received from out-of-state is pertinent to a determination of status, it must likewise be pertinent to a determination of rate jurisdiction, because status as a public utility is a prerequisite to rate jurisdiction under Section 205 of the Federal Power Act.

The evidence shows that the Hoover energy received at Highgrove Substation via Hayfield was, in 1958, approximately 1% of all energy received and generated by Edison (Exhibit 29). In 1959, the Hoover energy received via Hayfield declined to 1/5 of 1% (Tr. 893).

Out-of-state energy was received into the Edison system at Highgrove Substation only in trivial amounts during the period covered by the record upon which the Order was based. As pointed out later in this Petition, out-of-state energy is not now received by Edison at Highgrove Substation because of matters which have arisen since the hearing.

ERRORS NOS. 6 and 7. The rates presently charged to Colton are applicable for service under the 1945 Contract, no excess charges have been collected, and the Commission

has erroneously construed said Contract. Edison has been deprived of the opportunity to present evidence establishing the proper interpretation of said Contract and the course of Colton's conduct in respect thereto. A summary of the evidence and the reasons for these conclusions are fully set forth in Edison's Opening Brief, pages 39 through 48, and its Exceptions, pages 20 through 22, and are incorporated herein by reference.

In response to Edison's request that the record be reopened to take additional evidence on the interpretation of the Contract, the Commission states that Edison "had full opportunity to present such evidence" (Mimeo., p. 14). During the hearings on this matter, Edison repeatedly tried to introduce evidence on the proper interpretation of the 1945 Contract and the course of Colton's conduct in respect thereto. The Presiding Examiner erroneously rejected such evidence (Tr. 347-362 and Exhibits 24 and 25 for identification). Because of the failure to accord Edison an opportunity to present pertinent evidence on matters which the Commission now finds were issues in this proceeding, Edison did not receive a fair hearing, and any findings made by the Commission are erroneous and without substantial evidence to support them.

ERROR NO. 8. Under principles of equitable estoppel Colton cannot now deny the propriety of the rates charged by Edison and, furthermore, the decisions of the

California Public Utilities Commission are *res judicata* respecting the proper rates to be charged under the 1945 Contract. A summary of the evidence and reasons for these conclusions are fully set forth in Edison's Opening Brief, pages 48 through 51, and are incorporated herein by reference.

In determining whether or not so-called "excess charges" have been collected, the Commission must consider all legal and equitable aspects of the relations between Edison and Colton. Proof that Colton is estopped and barred by the doctrine of *res judicata* from now claiming that the changes in rates were improper is pertinent to a determination of the amount of overcharges, if any, collected or to be accounted for. Edison has been precluded from presenting pertinent evidence on these issues.

ERROR NO. 9. Edison can lawfully have its 1945 Contract rescinded or reformed and is entitled to retain monies collected equal to the reasonable value of past service to Colton. A summary of the evidence and reasons for this conclusion is fully set forth in Edison's Opening Brief, pages 51 and 52, and is incorporated herein by reference.

The Commission in its Opinion states that Edison has not shown grounds for such rescission here as it might be expected to do (Mimeo., p. 14). As shown above with respect to Error No. 7, Edison was denied the opportunity

to present pertinent evidence on this issue. Such evidence would have shown that there was a mutual mistake of fact and law, both sides believing the California Public Utilities Commission to have jurisdiction to authorize the Contract to fix the rate levels from time to time thereunder. Under California law which controls this Contract, Edison may have the Contract judicially declared rescinded or reformed and is entitled to apply such monies it has received from Colton as a set-off against the reasonable value of the service rendered to Colton. Until this Commission issued its Order of July 31, 1961, there was no reason for Edison to rescind and there has been no "taking advantage of failure to file".

(1959)

The Commission improperly relied on the *Montana-Dakota* case (cited Mimeo., p. 14) for the proposition that Edison may not have its Contract rescinded. This case is not authority for that proposition.

ERROR NO. 10. The Commission's findings and Order with respect to accounting, rates and refunds, are unsupported by substantial evidence and if enforced would be confiscatory. A summary of the evidence and the reasons for these conclusions are fully set forth in Edison's Reply Brief, pages 20 through 22, and its Exceptions, pages 20 through 22, and are incorporated herein by reference.

ERROR NO. 11. If Edison were required to comply with said Order and file the 1945 Colton Contract as a rate

1960

schedule, such rate schedule should not be effective as of any date prior to the date of such filing. The Commission has referred to the treatment accorded the independent producers of gas which were permitted to file rates in effect on the date jurisdiction was finally determined to exist by the United States Supreme Court (Mimeo., p. 12). The effective date of such filings under the Natural Gas Act was June 7, 1954, notwithstanding the circumstance that the same basis for jurisdiction had existed in many cases since 1938. The Commission's Order herein which directs Edison to file a rate schedule to be effective for a period more than 7 years prior to the Commission's Order Determining Jurisdiction is arbitrary, discriminatory and unlawful.

ERROR NO. 12. Neither the letter nor the spirit of the Federal Power Act requires this Commission to exercise jurisdiction over the rates charged by Edison to any of its customers in California. The sales of electric energy to Colton are not and never have been sales of electric energy at wholesale in interstate commerce subject to jurisdiction of the Federal Power Commission. The Petition of the City of Colton should be dismissed for lack of jurisdiction of the Federal Power Commission to act thereon.

### A Rehearing Is Required Because of Matters That Have Arisen Since the Hearing

In addition to the grounds heretofore set out in detail, Edison further respectfully requests that the Commission grant a rehearing and vacate and reverse its Order because of matters that have arisen since the hearing as hereinafter set forth.

The Commission's determination of jurisdiction is based upon a finding that energy generated outside the State of California was transmitted over lines of the Metropolitan Water District of Southern California and delivered to Edison's system at Hayfield and thereafter transmitted over Edison's 220 kv lines to Edison's Highgrove Substation and thereafter delivered to Colton (Mimeo., p. 9). These conditions have been substantially changed in recent months. A major enlargement of the Colorado River Aqueduct has recently been completed and the District now requires its entire entitlement to Hoover energy for its own use and is purchasing large amounts of supplemental energy from Edison in order to meet its greatly expanded pumping requirements. This is a complete reversal of past operations when Edison purchased Hoover energy unused by the District and took delivery thereof at Hayfield. At the present time, Edison is delivering to the District energy at the rate of over 400 million kilowatt-hours per year at Hayfield. Such change in operation has reversed the historical power flow pattern and requires deliveries of energy to the District over the Highgrove-Hayfield line which preclude the receipt of energy by Edison over this line. Only about 2 million kilowatt-hours was received by Edison over the Hayfield line in the last twelve months and no such energy whatsoever has been received since February of this year. Under these conditions, no further receipts of energy from this source, except for possible emergency or disaster conditions, can reasonably be anticipated.

Further, the transmission line between Edison's Chino and Highgrove Substations, which constituted a part of the so-called "third path" whereby it was claimed that Hoover energy might reach Colton, is no longer in service. On January 7, 1961, as a part of Edison's continuing system expansion, it was necessary to disconnect Edison's Highgrove Substation from Chino Substation and replace this connection with one to Barre Substation to better meet system load requirements.

The change of circumstances reflected above is not temporary but results from the increasing demands for additional water and power by the growing population of Southern California which will continue in the future.

Because the basis asserted for the Commission's finding of jurisdiction no longer exists by reason of matters

1963

that have arisen since the hearing, the Commission is requested to order a rehearing and, upon receipt of evidence of such change in circumstance, to dismiss this proceeding. Edison is prepared to proceed with such rehearing upon 30 days' notice.

## Request for Extension of Time

Concurrently herewith Edison is filing a motion for a Stay until such time as the Commission has acted upon this Petition and for an additional limited extension of the times specified for compliance with said Order, if this Petition be denied, all as more fully set forth therein.

## Conclusion

Edison respectfully requests that this Commission grant a rehearing and vacate and reverse its Order Determining Jurisdiction issued herein on July 31, 1961.

Respectfully submitted,
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(1967)

### Petition of Public Utilities Commission for Rehearing and for Order Staying or Extending Time, E-6821.

1967

## UNITED STATES OF AMERICA
## BEFORE THE
## FEDERAL POWER COMMISSION

In the Matter of
CITY OF COLTON, CALIFORNIA,
vs.
SOUTHERN CALIFORNIA EDISON COMPANY.
Docket No. E-6821

## PETITION OF INTERVENOR PUBLIC UTILITIES COMMISSION FOR REHEARING AND FOR ORDER STAYING OR EXTENDING TIME

If there is any truth in the saying that "a good judge expands his jurisdiction," the Federal Power Commission must be a very good commission indeed. However, even the best of judges and commissions may not in their zeal ignore rules of evidence or laws of physics. The Public Utilities Commission of the State of California (California) respectfully submits that this is just what the above Commission has done in the above case, and being aggrieved by the Commission's "Opinion and Order Determining Jurisdiction" issued July 31, 1961, files this Petition for Rehearing pursuant to Section 313(a) of the Federal Power Act

1968

as amended, and paragraph 1.34 of the Commission's Rules of Practice and Procedure. California respectfully requests that this Commission vacate and reverse its said order, and to issue in lieu thereof an order, determining that the sales of electric energy by Southern California Edison Company (Edison) to the City of Colton (Colton) are not sales of electric energy at wholesale in interstate commerce subject to the jurisdiction of this Commission and that the petition of Colton should be dismissed for lack of jurisdiction of the Federal Power Commission to act thereon.

California further requests, pursuant to Section 313(c) of the Federal Power Act, a stay of the Commission's order of July 31, 1961 until such time as the Commission has acted upon California's Petition for Rehearing.

California respectfully submits as grounds for such stay order that much of the opinion of this Commission relates to laws not heretofore interpreted by the courts. California further respectfully submits that no one would suffer any prejudice as a result of this Commission's granting of such stay, but that unless such stay is granted California will have been ousted of its jurisdiction of the resale rates to Colton pending determination of matters of first impression by a court of competent jurisdiction; that residents of California will suffer prejudice and Colton will be preferred unless such stay or extension is granted.

## SPECIFICATION OF ERRORS

California submits that this Commission should reverse its order on the following grounds:

1. This Commission erred in finding that the Boulder Canyon Project Act and Boulder Canyon Project Adjustment Act did not confer upon the Secretary of the Interior jurisdiction to regulate rates and service in the absence of State regulation for resale of electrical energy from Hoover Dam, and in finding that such jurisdiction was vested in this Commission.

2. This Commission erred in finding that the "bulk sale of energy here . . . concerns more than one state"

(Opinion p. 8). There is nothing in the record to support the assumption that any state other than California is interested in Edison's resale to Colton. On the contrary, the record shows without dispute that only California is interested. Arizona and Nevada, though having notice of this proceeding, took no part therein, and there is no "Attleboro gap" for this Commission to fill.

3. This Commission erred in finding that "The record shows that [energy from Hoover Dam] is transmitted from [Edison's Highgrove substation] through the step-down transformers mentioned above and is delivered to Colton for resale. . . ." (Opinion p. 9) The record does not show this, and the finding has no support in the record.

4. This Commission erred in finding that "Edison delivered electric energy to Colton for resale that has been generated outside of California." (Opinion p. 10) The record does not support such an assumption. This Commission's staff's study carefully traced that which was freely admitted by Edison—that out-of-state energy reached Edison's 220-KV bus at Edison's Highgrove substation. The opinion does the same thing. (p. 9) Then the opinion abandons facts and precise tracing techniques, and resorts to some unfounded and unproven theory about proximity of relative bus positions—apparently sort of a "first in, first out" assumption which not only has no support in the laws of physics or in the record but which is contradicted by the record. From this unproven theory this Commission has leaped to an unwarranted, arbitrary and unreasonable conclusion. If proximity on an electric system has any bearing, Colton is much closer to any of Edison's California steam plants than it is to Hoover Dam.

5. This Commission erred in inferring that it is the position of Edison and California that it is always impossible to trace energy flows on an integrated system with multiple sources of generation and multiple loads.

Edison's and California's expert witnesses did not, as stated in the opinion at page 9, testify that "in an interconnected electric system with several generating resources, and numerous loads, it is impossible to identify the electric energy delivered to a particular load." They did testify that on such a system it is sometimes possible to identify a particular source of the energy delivered to a particular load provided the various

1971

circuits are equipped with metering equipment necessary to make such a determination. The record is uncontradicted that the metering equipment necessary to make, such a determination in the case of Colton has not been installed nor is it necessary for the proper and efficient operation of the Edison system. Absent such equipment and the data which might be available therefrom, this Commission's finding that there is interstate energy in Edison's sales to Colton for resale is in excess of its jurisdiction, is arbitrary and unreasonable and a denial to Edison and to California of due process of law.

6. This Commission erred in finding that the facilities by which Edison serves Colton are not facilities used in local distribution. There is nothing in the record from Staff or any party to support such a conclusion. On the contrary, the record supports only a finding that such facilities are used *solely* in local distribution.

7. This Commission erred in inferring if not actually finding (Opinion p. 10) that the local distribution characteristics of the facilities which serve Colton are not relevant under the Federal Power Act and that the sale to

)1971)

Colton "is a sale at wholesale in interstate commerce subject to our jurisdiction regardless of the nature of the facilities used to make the sale."

1972

8. This Commission erred in placing any reliance upon deliveries of interstate energy from Davis Power Plant to Edison for its assertion of jurisdiction of resale rates to Colton, since such deliveries, if they did occur, were small, infrequent and have not occurred since April 30, 1956.

9. This Commission erred in finding that it had no discretion to reject jurisdiction over trivial resales of interstate energy, assuming that there is such energy in Edison's sales to Colton.

10. This Commission erred in finding that it has no jurisdiction only over the energy which is separately metered and used by Colton for well pumping. Colton uses energy sold to it by Edison for other municipal purposes, not subject to this Commission's jurisdiction.

11. This Commission erred in attempting to arrange for reparations from Edison to Colton, thus trying to do indirectly that which Congress has not authorized it to do directly.

As a further and separate ground for rehearing, California alleges that matters have arisen since the hearing and decision or order herein, as follows: California is informed and believes and upon such information and belief alleges that Edison presently and for approximately six months last past has received no electric energy from Hoover Dam on its Hayfield connection, and that it

1973

is not anticipated that electric energy from that source will be received at that connection in the future.

By reason of the foregoing, the opinion of this Commission is in excess of its jurisdiction, arbitrary, unreasonable, unlawful, prejudicial to the people of the State of California, and to Edison's stockholders and ratepayers, and preferential to Colton, and a denial of due process to California and the people of the State of California and to Edison.

Respectfully submitted,

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

/s/ WILLIAM M. BENNETT
William M. Bennett
Chief counsel.

/s/ MARY MORAN PAJALICH
Mary Moran Pajalich
Senior Counsel

Attorneys for the Public Utilities
Commission of the State of
California

Dated at San Francisco, California, this 18th day of August, 1961.

(1978)

**Order Denying Rehearing and Granting Stay, E-6821.**

1978

## UNITED STATES OF AMERICA
## FEDERAL POWER COMMISSION

**Before Commissioners: Joseph C. Swidler, Chairman; Jerome K. Kuykendall and L. J. O'Connor, Jr.**

**City of Colton, California**
**vs.**
**Southern California Edison Company**

**Docket No. E-6821**

## ORDER DENYING REHEARING AND GRANTING STAY

(Issued September 14, 1961)

Southern California Edison Company (Edison) on August 21, 1961 and the Public Utilities Commission of the State of California (PUC) on August 22, 1961, have filed applications for rehearing of the Commission's Opinion and Order No. 346, issued July 31, 1961, determining that we had jurisdiction over sales of electric energy by Edison to the City of Colton for resale. Both Edison in a separate motion, and PUC have asked for stay of the Commission's order as discussed below. We have considered the applications for rehearing filed and, except with respect to an allegation of changed circumstances to be discussed below, are of the opinion that generally the points raised have been answered in our original opinion. However, the following additional comments may assist in an understanding of our position.

Edison contends that the out-of-state energy it receives at its Highgrove substation is a *de minimis* portion of its total energy received and generated and this fact must be taken into account in determining status as well as rate jurisdiction. PUC raises a similar point. We have already shown (Mimeo. p. 16) that the out-of-state energy is not *de minimis* with respect to the sale to Colton for resale. Edison's status as a public utility, a prerequisite to rate jurisdiction as Edison says, was not in issue. Nevertheless the record shows that the company received large amounts of out-of-state energy not only at Highgrove through the Metropolitan Water District (MWD) system, but also at its Chino substation directly from the Hoover Dam. In 1958 Edison received 941,990,700 kwh at Chino from Hoover or about 6 percent of the total energy available to its system. The energy received through the MWD system at Hayfield amounted to 177,724,800 kwh in 1958, although, as indicated in our original opinion, this might at times include some Parker Dam energy generated in California. Therefore we find that the *de minimis* doctrine is not applicable either to Edison's status as a public utility or to our jurisdiction over the sale to Colton.

1979

Edison contends that during the hearings it tried to introduce evidence on the proper interpretation of its 1945 contract and the course of Colton's conduct in respect thereto, and that because such evidence was rejected, it did not receive a fair hearing. This evidence is composed of proffered testimony and Exhibits 24 and 25 in this proceeding relating to Colton's position before the PUC. One exhibit contains an excerpt from the oral argument of Colton's counsel before the PUC on May 3, 1954, and the other exhibit was presented before the PUC on June 13, 1957 and includes a discussion of the financial effect of Edison's proposed rates on Colton and other cities. It appears that Edison introduced these exhibits here to show that the question of jurisdiction had been settled under the doctrine of *res judicata* before the California Commission, that Colton was estopped to invoke our jurisdiction, and that the contract was subject to change by the California Commission whether or not it had jurisdiction. We have already expressed our views on these questions. In our opinion the position taken by Colton before the California Commission is not relevant to the result. It would not be in accordance with the Federal Power Act if a jurisdictional proceeding concerning the Commission could be settled before a state Commission or if a complainant, representing consumers, could be prevented from invoking our power by the position it might have taken previously either mistakenly or because confronted with a rate increase proceeding before the state Commission which had assumed jurisdiction. Except for the following point this evidence was correctly rejected.

Edison contends that it was entitled to rescind its 1945 contract with Colton, and that it was denied the opportunity to present evidence on this point referring to its previous contentions with respect to Exhibits 24 and 25. These exhibits relating to proceedings before the PUC show that Colton was assuming PUC jurisdiction for the purposes of those proceedings, but they contribute little or nothing to whether Colton was mistaken or not mistaken as to the jurisdiction of the PUC. However, we shall admit the exhibits for this purpose and for what they are worth. In any case, as discussed in our opinion, the 1945 contract must be considered as Edison's rate schedule as though filed, and so considered embodies Edison's rates irrespective of any right of rescission.

Edison objects to our requiring it to file its 1945 contract as its rate schedule. It says this contract was effective seven years prior to our determination of jurisdiction, while we required the independent producers to file their rate schedules effective June 7, 1954, the date the United States Supreme Court determined we had jurisdiction. In our opinion the two situations differ. Here we have determined jurisdiction over one sale made by one company. This record shows that as of 1954, the 1945 contract was in effect, and therefore should have been on file as Edison's rate schedule. This case may conceivably be a precedent in other cases, but it will have nothing like the effect of subjecting a whole industry to our jurisdiction after a holding on our part that we did not have jurisdiction.[1] In the case of the independent producers it was necessary to pick a date that would be applicable to thousands of companies and individuals. We chose as reasonable the date of the Supreme Court's decision that the producers were subject to our jurisdiction.

Edison now alleges that because of a major enlargement of the Colorado River Aqueduct MWD requires its entire entitlement to Hoover energy for its own use and is purchasing large amounts of supplemental energy from Edison. It says that it has received only about two million kilowatt-hours over the Hayfield line in the last year and no energy has been received since February of this year. It does not anticipate further receipts from this source except for possible emergency or disaster conditions. PUC sets forth a similar allegation. Edison also says that Edison's Highgrove substation has been disconnected from its Chino substation so that Hoover energy could not pass through the Chino substation to Highgrove and then to Colton. Therefore Edison specifically requests a rehearing on these changed circumstances. These changes, if supported, might affect our jurisdiction but our jurisdiction does not arise or disappear with every temporary change in operation. In this connection we note that in its petition to intervene in *The Arizona Power Authority, et al.*, Project No. 2248, *et al.*, filed August 7, 1961, Edison recites that it purchases firm power allotted to but unused by MWD and interchanges power allotted to and used by MWD. According to testimony in that case MWD, as of September 1, 1961, acquired Hoover Dam Unit N7 as an additional generating source, a factor which might affect the situation. Whatever the changed situation, we are concerned here with a considerable past period as well as the future. In the proper administration of the Federal Power Act we think this proceeding should be concluded on the present record. The changed circumstances can properly be brought before us in another proceeding.

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[1] *Phillips Petroleum Co.*, 10 FPC 246; *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672.

Edison in a motion filed August 12, 1961 and the PUC in its application for rehearing have requested a stay of our order of July 31, 1961, until we have acted on the applications for rehearing. Edison also requests that the time for filing its rate schedule and the time for filing accounting entries and a proposed disposition of the special reserve required by us be extended. Edison states that it does not want to disrupt the relationship between the parties until action on the applications for rehearing and points out that the parties have historically used a calendar month as a basis for the determination of charges and billing. Our Secretary has extended the time for filing Edison's rate schedule until October 1, 1961 and the time for filing the accounting entries and plan of disposition of the reserve until November 1, 1961. Accordingly, we shall stay compliance with respect to the rate charged as required in Paragraph (B) of our order until October 1, 1961.

*The Commission further finds:*

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed herein on August 21, 1961 by Edison and August 22, 1961 by PUC set forth no new facts or principles of law which were not fully considered by the Commission when it issued its opinion and order of July 31, 1961, or which having now been considered, warrant any change in or modification of such opinion and order except as specified below.

*The Commission orders:*

(A) The applications for rehearing of the Commission's Opinion No. 346 and order issued July 31, 1961, filed by Edison and PUC are hereby denied except as specified below.

(B) Exhibits 24 and 25 are hereby admitted into evidence for the purpose specified above.

(C) Our order of July 31, 1961, shall be stayed with respect to compliance with paragraph (B) thereof until October 1, 1961.

By the Commission.

/s/ J. H. Gutride,
Joseph H. Gutride,
Secretary.